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HUMAN RIGHTS VIOLATIONS AT THE PORT-
AU-PRINCE PENITENTIARY

Y 4. IN 8/16:H 88/32

Human Rights Violations at the Port...

HEARING
BEFORE THE
SUBCOMMITTEE ON
THE WESTERN HEMISPHERE
OF THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

MAY 3, 1995

Printed for the use of the Committee on International Relations



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HUMAN RIGHTS VIOLATIONS AT THE PORT-AU-PRINCE PENITENTIARY

WEDNESDAY, MAY 3, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON WESTERN HEMISPHERE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:12 a.m. in room 2172, Rayburn House Office Building, Hon. Dan Burton (chairman of the subcommittee) presiding.

Mr. BURTON. Can the panel take their seats? We have other members that will be coming.

Unfortunately, this week is a short week because the Republican majority is having a retreat down in Virginia; and as a result, what we anticipated was going to be a workday is now what we call a pro forma session. And so some of the members have already gone down to the retreat, and other members have gone back to their districts on both sides of the aisle. But we will conduct the hearing and it will be a matter of record. It will be something that will be conveyed to the leadership in the House and the Senate; and to the President of the United States.

Before I make my formal opening statement, I would like to make a couple comments about some actions that were taken yesterday that impinge upon the authority and the jurisdiction of this subcommittee. Yesterday the President of the United States changed our policy to a large degree with Cuba. This drastic shift in U.S. policy toward Cuba announced yesterday by the Clinton administration came as a bolt out of the blue for all those concerned about freedom and democracy in Cuba.

The new approach, worked out in secret with the Cuban Government and without any consultation with the Cuban-American community—in fact, the Cuban-American community believes they have been misled or lied to by the administration, the U.S. Congress, or even key State Department officials, will rightfully be considered a stab in the back by the long-suffering people of Cuba, who want freedom, democracy and human rights.

I do welcome the decision to admit the Cuban freedom-seekers now stuck at Guantanamo at a cost to the American taxpayer of \$1 million a day into the United States. These decent people have remained in limbo for almost a year under very difficult conditions.

I also fully understand that Fidel Castro must not be allowed to threaten the United States with periodic floods of refugees. Toward that end, I have written to the President in the past asking him to impose a blockade on Cuba when Castro tries to have a flotilla

of people leave that country to put pressure on us to change our policies.

However, the decision to patrol the shores of Cuba, in cooperation with the Communist dictatorship of Fidel Castro, is abominable and reprehensible. In January we had a hearing on the March 13 tugboat incident, where the Cuban Navy deliberately murdered 42 women and children on the high seas. They put their boat beside the tugboat. Women were holding their children aloft so they could see there were children on board. The navy kept shooting the women with water hoses, and when the women took the children down into the hull of the ship, the navy pulled alongside and filled the hull with water and drowned 42 women and children.

These are the people that President Clinton is now going to be working with and asking our Navy to work with. The very notion that the United States, the world's beacon of freedom, has worked out such a deal in secret with one of the world's most notorious violators of human rights, is nothing short of blood curdling. It is particularly despicable that this pact with the devil was negotiated behind the backs of the Cuban-American community and the representatives of the American people, the U.S. Congress.

Furthermore, these secret talks occurred despite repeated assurances to the Cuban-American community that no such negotiations were taking place. Fidel Castro should not believe that he can intimidate the United States of America. Despite the unilateral actions of the Clinton administration, the U.S. Congress, acting in a bipartisan fashion, will confront Castro, the last Communist dictator in the Western Hemisphere.

We intend to push with full steam ahead to pass a Cuban Liberty and Democratic Solidarity Act of 1995 through the U.S. Congress. I plan to call a hearing next Tuesday, May 9; and we will go into detail on U.S. policy toward Cuba, in light of yesterday's announcement by the Clinton administration. The Cuban people have suffered under Communist tyranny for over 35 years. That is far too long, and we shouldn't be negotiating with that dictator right now. My subcommittee will continue to stand in solidarity with the Cuban people until Cuba is free. I have now vented my spleen on that, and we will now get on with the purpose of the hearing today.

First of all, I would like to welcome all of you here today to the Subcommittee on the Western Hemisphere's hearing on human rights conditions at the Port-au-Prince Penitentiary. In mid-February, I led a congressional delegation to Haiti. During our visit, I insisted on stopping off at the Port-au-Prince Penitentiary. I was asked to do this by an enlisted man.

I wasn't going to go to the Port-au-Prince Penitentiary, but one of the enlisted men I had interviewed during our visit suggested I do so. He said it was unbelievable what was going on over there. So I said to the commanding officer, I want to go to the Port-au-Prince Penitentiary.

And he said, "Oh, you don't want to go there, Congressman." I said, "Yes, I do. I want to see the human rights conditions over there," so reluctantly he took me.

He was a very accommodating, two-star general. I don't want to cast aspersions on the gentleman, but he really didn't think I should be going. I had heard the conditions were quite bad, and I really wanted to see for myself. What I did see? In a word, it was horrible. I will not soon forget it, and I am sure my colleagues who were with me will say the same.

The prison's conditions were subhuman. I had to have a handkerchief over my mouth to even be able to breathe in that place. That is how bad it was. The cells were overcrowded and the kitchen obviously unsanitary. It was a hole in the wall. I can't imagine anybody eating or preparing food in that hole in the wall. It was just unbelievable. Most noticeable was the terrible stench. It was overpowering.

The sewage system was broken. You could see the raw sewage running underneath the ground through the courtyard. I also had been told that prior to my visit, there had been 500 people in a prison cell standing ankle deep in excrement for up to 4 to 5 months and some of their feet rotted off. They had gangrene and they had to have amputation.

Here is the kicker. By the time we saw the prison, it had been cleaned up. I want you to know, it was awful—and it had been cleaned up. The U.S. Army sergeant who was there had done a superb job of organizing a cleanup operation.

In particular, a huge mound of garbage, excrement and human waste, had been removed. We were able to see the remnants. There was a wall at the prison, about halfway up the size of this wall, and the excrement and the garbage had been all the way to the top of that wall at an angle of 45 degrees angling down into the courtyard. That had been cleaned up to a degree, thanks to these enlisted men who were overseeing the cleanup detail.

Before our heroic military men arrived, the prison was by all accounts hell on earth, and I can really believe it.

I think it is obvious that anyone would feel strongly, after seeing such a sight. I am not one of those people who believes in coddling prisoners. I believe people that are convicted of a felony and go to jail should be treated very harshly and pay their payment to society.

At the same time that I say that, I think it is extremely important that we observe decency and human rights. I want to tell you, there could not have been even a remote possibility of decency and human rights in that penal institution.

This brings me to the case of Captain Rockwood. We are not here today to interfere in the military justice process. And I want to make that clear. I know there is a court-martial pending and we don't want to interfere. We have confidence in the military judicial system. Nor do we intend to prejudice a matter which will soon be before the military court, as I said.

Nonetheless, we have here today an officer of the U.S. military who appears to be guided by the best of motivations. It is a troubling case and it highlights the problems which arise for our military in operations such as in Haiti. I think it is important that we get to the bottom of this situation. We need to find out whether or not proper procedure was followed, whether or not the captain was trying to protect these people from human rights violations, and

whether or not our military should have taken a more active position toward that prison in a much more responsible period of time.

I am anxious to hear today from our witnesses on our panel. So without further ado, let me go to our panel. Our panel today includes Mr. Paul Browne, vice president of the Investigative Group, who spent several months in Haiti as the Deputy to Commissioner Ray Kelly, supervising the International Police Monitors in Haiti. We look forward to hearing of your firsthand account of the human rights violations at the Port-au-Prince Penitentiary.

Cpt. Lawrence P. Rockwood is a member of the 10th Mountain Division at Fort Drum, New York. He is scheduled to be court-martialed later this month for events which took place last year during his position in Haiti. We look forward to hearing his comments.

Col. Richard H. Black, a retired U.S. Army officer with a very distinguished career, is an expert on military law. And we also look forward to his testimony.

Larry Di Rita, deputy director of Foreign Policy and Defense Studies at the Heritage Foundation, recently wrote an excellent article on Haiti for the *Washington Times*.

We welcome all of you here today and look forward to receiving your testimony, which will provide perspective on the situation in Haiti. We will start with Mr. Browne.

If you could try to restrict your statements to 5 minutes, it would be very helpful to us. I want to try to get to questions as much as possible, so we can really get to the bottom of this.

STATEMENT OF PAUL J. BROWNE, VICE PRESIDENT, THE INVESTIGATIVE GROUP

Mr. BROWNE. Yes, sir. Thank you, Mr. Chairman, members of the committee. I served as Deputy Director of the International Police Monitors in Haiti from October 3, 1994, to March 31, 1995, a 6-month period that the police monitors were deployed in Haiti as part of the American-led multinational force. The monitoring force was comprised of approximately 1,200 police professionals and interpreters from 20 nations around the world. The police monitors stopped human rights abuses by the Haitian police, established and mentored an interim police force—

Mr. BURTON. Pardon me for interrupting, but these microphones don't pick up very well. If you could get them as close to your mouths as possible, we can make sure we can hear everybody's testimony.

Mr. BROWNE. Yes, sir. Police monitors stopped human rights abuses by the Haitian police, established and mentored an interim police force and paved the way for a new professionally recruited and trained police department. Our duties were assumed by the United Nations civilian police on March 31.

On October 13 last year, 10 days after I arrived in Port-au-Prince, I was on patrol in the vicinity of the Penitencier National, Haiti's national prison, when I monitored radio traffic alerting me to the fact that a large threatening crowd had assembled outside the prison. I responded to the scene and observed a crowd of about 1,000 people filling the sidewalks and the street in front of the prison.

Another international police monitoring patrol had responded, as did the U.S. military police who had assumed protective positions in front of the prison entrance. There was some concern this crowd was going to storm the prison. A rumor had spread through the crowd that prisoners inside were being starved to death, and that 52 inmates had been killed. I found that interesting, but not particularly alarming, since a nearly identical rumor subsequently proved untrue, had circulated a few days earlier in Carrefour, an area just outside of Port-au-Prince.

The Carrefour rumor had lead to a similar demonstration in front of the jail there. In that case, the police monitors invited a few civilians from the crowd to inspect for themselves the jail. And in this way, the civilians helped document that the rumors were in fact unfounded and the tactic helped restore order.

An MP officer in front of the national prison, who was familiar with that situation in Carrefour, asked if we could use it again to help peacefully disperse the crowd. So I selected three individuals at random from the crowd of demonstrators and they accompanied me on a cell by cell, room by room inspection of the prison. No one was found dead inside, and none of the prisoners we talked to reported any killings or proactive physical abuse, but conditions inside the prison were medieval, nonetheless.

The prison was crowded. When I was there, there were up to 300 prisoners in one single large block that you alluded to, Congressman. And there was no running water or sanitary facilities in that part of the prison, just a hole in the corner where prisoners would urinate. There were toilets but in very poor condition, located in the prison yard.

Most of the prisoners relied on daily visits from family members or friends to get fed. All of them had been receiving food daily, either by relatives or guards, according to the prisoners we talked to, except for that day in question, October 13.

When I brought this to the attention of the prison superintendent, he said that he was afraid that the crowd outside would overrun the prison if he allowed family members, as usual, to gain entry with food. So I asked him if he would invite the relatives inside if we dispersed the crowd, and he agreed. And that is eventually what transpired. Civilians who accompanied me reported to the crowd what they saw inside.

The crowd dispersed and family members lined up in an orderly way and were allowed to bring food to their incarcerated relatives. However, I had also inspected the prison infirmary and found that at least three inmates appeared emaciated and in need of immediate medical attention. Although the witnesses, the civilian witnesses had seen this, they didn't appear too disturbed by it.

But I felt there was a need to call in immediate medical attention and we did do that. And local ambulances arrived to evacuate the prisoners. But when they saw the crowd, which had still not dispersed, in front of the prison, they feared the evacuation would spark a serious disturbance. So the ambulances left.

By about midnight this same day, after working throughout the afternoon and evening with the U.S. Army and U.S. Embassy personnel, we tried unsuccessfully to get those ambulances to return. Finally, we assembled a medical team from the International Com-

mittee of the Red Cross. The MP's provided military escort. We went back to the prison. It is now probably after midnight.

The guard on duty wouldn't let us in. His boss was away. So we—I reached the superintendent at home, woke him up, and he finally agreed to bring the—allow that team to come in and work with the prisoners the next morning.

I will try to move quickly through the rest of this.

As a result of that visit, we worked with the Red Cross to provide routine inspection of the prisons. The police monitors assembled their own team of inspectors to go throughout the prisons to monitor such things as lack of food and lack of medical treatment. And where we could, we would provide a meal a day.

We had a discussion about providing two meals a day in one case in some areas, but decided that that might cause prison break-ins, people hungry, Haitians, in neighboring communities, trying to get into the prison to be fed. So we limited it to one MRE a day.

We also found lots of prisoners in there, no records, no accounts of why they were there, how long they were there, when they were due to be released. As a result of our recommendations, the Haitian Government eventually assigned a special judge to release prisoners whose reasons for being incarcerated couldn't be documented.

Just in conclusion, Mr. Chairman, I have been asked if the conditions inside the national prisons had shocked me, and by American standards, of course, I was shocked. But for the poorest country in the hemisphere, whose ordinary citizens lived without potable water, with open sewers like you saw in the prison also coursing their way throughout cities, Soleil and other slums in Haiti, and without electricity most of the time, I have to be honest with you and tell you that I wasn't surprised that Haiti's prisons were just as bad as some of the conditions the regular citizenry had to put up with.

Thank you.

[The prepared statement of Mr. Browne appears in the appendix.]

Mr. BURTON. Well, we will pursue that in just a few moments.

Captain Rockwood, would you like to make your statements now? Then we will get to questions. Did the gentleman, Mr. Ballenger, have anything he would like to say in opening comment?

Mr. BALLENGER. No, thank you, Mr. Chairman.

Mr. BURTON. OK. Thank you. Captain Rockwood.

STATEMENT OF CPT. LAWRENCE P. ROCKWOOD, U.S. ARMY

Captain ROCKWOOD. Thank you, Mr. Congressman.

First of all, I would like to thank the chairman of the Subcommittee on the Western Hemisphere, Congressman Dan Burton, and other members, for giving me the opportunity to present my testimony here today. I am submitting for the record a statement with enclosures and I will summarize it briefly for you.

I will also submit a statement by Robert Weiner of the Lawyers Committee for Human Rights to be submitted into the record.

[The information appears in the appendix.]

Captain ROCKWOOD. I am facing a court-martial for my actions as a counterintelligence officer while I was serving in the 10th Mountain Division in Haiti. The subject of this hearing, however,

is not my actions, but rather the extraordinary inaction on the part of my superiors.

I will demonstrate that while in Port-au-Prince I witnessed and attempted to stop dereliction of duty, if not criminal negligence, on the part of my superiors who ignored the atrocious human rights conditions in the Port-au-Prince National Penitentiary that they were aware of.

Last September 15, the President announced that the primary objective of Operation Uphold Democracy was to prevent brutal atrocities against Haitians. And bearing in mind my military oath as a soldier, I took the words of my Commander in Chief at face value. I arrived in Port-au-Prince on September 23.

I assumed that the inspection of the prisons would be a priority for the multinational forces. Haiti's notorious human rights record, the regulations of the U.S. Army, and of the 10th Mountain Division itself, and most importantly, common sense, suggested so. Little did I know. For 1 week I consulted with every section of the command staff serving under Major David Meade, to organize an inspection of the National Penitentiary in Port-au-Prince.

I approached the command chaplain, our legal section, the civil military operation center, the military police, the special operations liaison officer, the U.N. military observers, and senior officers on our operation staff. Incredibly, these efforts of mine coincided with the U.S. special forces stumbling upon a modern day human rights nightmare, the prison conditions in Les Cayes.

But even then, I encountered an inexplicable indifference toward human rights violations, including shrugged shoulders and yawns. It became apparent to me that there would be no imminent accounting of prisoners held by the Haitian de facto government.

At that time, I filed an official complaint with the Inspector General of the 10th Mountain Division. That was 30 September, in the morning. I later learned the division started monitoring this prison as late as 3 months after arriving in Haiti. But this is not surprising.

During the preliminary hearing for my court-martial, the Division's senior intelligence officer and my immediate superior while I was in Haiti, decisively testified that human rights conditions were not a priority for the multinational forces. I was told my complaint to the Inspector General would not be brought to the attention of General Meade for a week when I submitted my complaint on September 30.

I believed my military oath of office not only allowed me but compelled me to place loyalty to the Constitution and the President of the United States before obedience to my immediate superiors. Thus last September 30, after having submitted this complaint, I left the military compound to inspect the major prison in Port-au-Prince on my own. I spent 2 hours there and only partially accomplished my task. I had already found atrocious conditions and shockingly emaciated inmates.

A military officer from the U.S. Embassy arrived and ordered me out. I was then taken to the military compound where my rights were read to me. A day later, I was escorted back to the United States. Now I am facing a court-martial. The charges appear petty next to the life-threatening human rights violations that continued

in Port-au-Prince National Penitentiary for 2½ months after my attempted intervention.

There is, however, nothing petty in the charges in my official complaint initiated on the morning of September 30. The Inspector General of the Army, Lieutenant General Ronald Griffith, recognized this fact and last April 17 opened an inquiry into the failure of General Meade and the members of his staff in addressing the human rights conditions and the National Penitentiary and other confined facilities in Haiti during his command of the multinational forces in Haiti, which ended on 15 January.

My court-martial, convened on the recommendation of General Meade, will start Monday. However, I am convinced that as a military officer, the actions I took under the circumstances were appropriate and legitimate under the Nuremberg principles. And I am equally convinced that the inaction of my superiors under the name Nuremberg principles, was not only derelict, but negligent, criminally negligent.

Thank you.

[The prepared statement of Cpt. Rockwood appears in the appendix.]

Mr. BURTON. Thank you, Captain. We will get back to questions with you in just a few minutes.

Colonel Black.

STATEMENT OF COL. RICHARD H. BLACK, U.S. ARMY (Ret.)

Colonel BLACK. Yes. Mr. Chairman, members of the subcommittee, I am Col. Dick Black, and before retiring last fall I was the Chief of the Criminal Law Division for the Army. Today I am a partner in the law firm of Taylor, Horbaly and Black.

I want to provide some background on the issues involving Captain Rockwood's court-martial. However, my remarks are based very strictly on public record, in order to avoid in any way compromising his case. Let me add that in no way do any of my comments reflect the views of the Department of Defense, but they are simply based on my previous experience as a senior legal official of the Army.

Captain Rockwood's actions took place during a very dangerous period, just 11 days after the multinational forces arrived in Haiti. Port-au-Prince was in a state of violent civil unrest. On September 29, the night before Captain Rockwood's foray into Port-au-Prince, severe violence erupted there. During a grenade attack and two gun fights, 16 Haitians were killed and 60 others were wounded. A misstep at that time might have set in motion a chain of events leading to the loss of American lives, including Captain Rockwood's. This in turn might have led to a collapse of the entire mission in Haiti.

At that time American officials were implementing a delicate shift of power between Haitian political factions and the multinational force. The political climate was explosive. This was no time for breaches of security or for disobedience of orders.

Discipline and obedience to orders, conveyed through a well-defined chain of command, are factors which distinguish a military force from an armed mob. Our Government must remain confident

that actions of military forces will correspond to, but will not exceed, the directives of our political leadership.

If they act beyond the directives of national authorities, troops risk embroiling America in unintended armed conflicts. Now, the articles discussing the Rockwood case indicate that Captain Rockwood felt justified in violating security rules and the orders of his superiors because of the President's public pronouncements regarding Haiti. President Clinton said that our objectives in Haiti did include the restoration of human rights.

Under certain circumstances, orders from superiors can supersede those of immediate commanders. However, in my view, the President's televised statements did not constitute orders under military law, in my view. Press reports have compared the Army's failure to immediately investigate Haitian prisons to events which occurred at My Lai, or to the war crimes trial of General Yamashita following the Second World War.

But Yamashita was hanged for failing to prevent vicious crimes committed by his own troops. None of these cases suggest a legal duty to intervene and prevent violations of human rights committed by foreign nationals. Military officers are not responsible for rectifying violations by foreign officials who are not under their direct control. And again, I point to the timeframe in which all of this occurred, 11 days following our entry into Haiti.

Captain Rockwood's unusual undertaking could have had catastrophic results. He arrived at the prison unannounced and, according to press reports, he claimed that he entered by, "literally placing my boot in the door."

Had an exchange of gunfire resulted, a prison riot or an armed action by one of the edgy Haitian factions could have occurred. Captain Rockwood could have been killed, but so could others, compelled to come to his rescue. Troops are tightly controlled in volatile situations to avoid just such needless and unintended risks.

Without going into detail, I will say that the press accounts suggest the 10th Mountain Division did try to resolve this issue in a low-key manner without a trial. Captain Rockwood, according to the press, was offered nonjudicial punishment. However, he demanded a trial by court-martial, which is his right under the law.

He will be given the opportunity to fully and fairly litigate the issues which he has raised and which I know concern him very much, before the military courts. He has substantial appellate rights which reach all the way to the U.S. Supreme Court. I have no doubt, based on my experience, that his views will be fairly aired within that process.

Americans continue to question our involvement in Haiti. They are deeply suspicious of the United Nations. They are suspicious that it is usurping American sovereignty. They have little stomach for peacekeeping missions under a one-world banner.

While our political leaders debate the merits of intervening in foreign lands, our military commanders must have congressional support for maintaining order within the ranks. These are difficult situations, and as the Captain Rockwood case indicates, they place American troops in situations for which they are ill-equipped. We are not a social agency. We are a military arm of the government.

This ends my prepared statement. I would be happy to respond to questions.

[The prepared statement of Colonel Black appears in the appendix.]

Mr. BURTON. Thank you, Colonel Black. I am sure we will have some questions for you and some comments in just a few moments.

Mr. Di Rita.

STATEMENT OF LAWRENCE T. DI RITA, DEPUTY DIRECTOR, THE HERITAGE FOUNDATION

Mr. DI RITA. Thank you, Mr. Chairman. I appreciate the opportunity to come to speak today. I have, as the others, provided some written testimony already, and I will just summarize those.

I do commend you for taking this issue on, and the broader issue of the U.S. policy in Haiti. And as an aside, I commend you as well for the comments you made at the beginning about the Cuban policy which changed yesterday. It is my belief, and we can talk about this perhaps, that what we are having to deal with now in Guantanamo Bay, Cuba, is the direct result of having really botched the Haiti—the situation of Haiti. And I think there is a direct link.

I will not make specific comments on the merits of Captain Rockwood's case. As Colonel Black has said, he will have his day in court.

I am a former naval officer and served for 17 years and believe in the military justice system, and I believe that he will be—his case will be heard.

Secondly, I won't discuss the individual situation at the National Penitentiary. You have described it in a very compelling term, and Mr. Browne has been there and seen it and it certainly sounds as though the conditions there were indeed deplorable. What I want to do is just zoom out a little bit—

Mr. BURTON. The mike, just pull it a little closer to you.

Mr. DI RITA. Just zoom out a little bit from what Colonel Black started to talk about. This is the question of the use of the military for what we are calling nontraditional operations. This is certainly growing.

The military has been—we are seeing the military used for things like the war on drugs. Any given day, there is any number of Navy ships in the Caribbean chasing drug runners, aircraft doing the same thing. We are certainly seeing the use of the military in peacekeeping operations around the world, including in Haiti, and of course humanitarian operations, in places like Somalia and elsewhere.

There is a lot of reasons why this is happening. The military has unique capabilities. Only the military can get places far away in short order, with a lot of people and supplies. There is a justifiable use of the military for some of those circumstances.

Another reason is that the public has a great deal of confidence in the military. According to a recent poll by the council for excellence in government, the military has a 60 percent approval rating, which is double the next highest government institution, which by the way is local government, not the Federal Government.

There's a great deal of frustration with the end of the cold war and the turmoil around the world, and there is a sense that the

United States has to do something about it. And I would go one step further. The Clinton administration national security strategy has encouraged the use of the military in circumstances like this by placing the promotion of democracy abroad as an explicit objective in the national security strategy. And in that strategy, it specifically hails the case of Haiti as an example of how we will use military force to promote democracy abroad.

In the same document, the President raises a number of questions. Is there a clearly defined mission for the use of the military? What is the environment of the risks that we are entering? And do we have time lines and milestones to get us out, to lead to an exit strategy?

And I would argue that in the case of Haiti, none of those questions could be answered sufficiently to justify the use of military force. Captain Rockwood can certainly discuss whether or not he understood the answer to those questions that are posed by the President's own national security strategy, but I would say that none of those questions was answered particularly well.

What was the mission in Haiti? To restore democracy. Without wanting to sound glib, restoring democracy in a country that has never had democracy is a farce. It sounds an awful lot like the justification we used in 1915 to invade that country.

And after we left 20 years later, the country was not much better off for us having been there. To the administration, it was actually Operation Restore Aristide, not Operation Restore Democracy. There are a number of democratically elected antimilitary, anti-Cedras Democrats in Haiti, who loath Mr. Aristide, and continue to do so and are very concerned about the fact that the United States has placed its full faith and confidence in him.

And I would just mention at this point, that as deplorable as the conditions in Haiti are, as you have seen personally and in the National Penitentiary as Mr. Browne has described, and Captain Rockwood, those conditions were deplorable before we got there and they will be deplorable after we leave, as unfortunate as that is. Placing the military into the middle of a overseas political turmoil like this really begs the types of problems that we are seeing in the case of the Rockwood—in the Rockwood case.

We are asking the military to make choices that they are not capable of making—individual members of the military to make choices that they are not capable of making within the boundaries of custom, regulation, tradition, and as Colonel Black said, good order and discipline.

I would even say that if deplorable prison conditions are a reason for invading other countries, then we really better get started, because there is a lot of countries around the world with deplorable prison conditions. When we put the military in a situation like this, the most trusted institution in America soon appears inept, and even incompetent.

Saw that in Somalia, where we went there to feed starving children, and left ignominiously, having been forced out by warlords. Our conditions for withdrawal in Haiti, which is democracy there, is a remarkably high standard to set. And we are now—the U.S. Government in general and the U.S. military in particular, has had imposed upon it establishing that standard.

It is simply inappropriate for a military objective. And just going one step further, we have now institutionalized this ambiguity of the nontraditional missions. The Clinton administration's directive on peacekeeping gives U.S. commanders the authority to opt out of United Nations orders that they don't believe legal or appropriate. This raises many questions.

Is that authority to opt out of orders delegated to subordinate commanders? Under those circumstances, Captain Rockwood might indeed be exonerated. How different is that from what Captain Rockwood is alleged to have done? If the administration is placing as policy the authority for U.S. commanders to opt out of orders they don't like, that is clearly putting them in a very uncomfortable situation.

I will just close quickly by referring to the classic in American civil military relations by Professor Samuel Huntington from up at Harvard University. The book is called "The Soldier and the State", and it has become something of a textbook on civil military relations.

In that book, Professor Huntington says the principal professional objective of the U.S. military is as a manager of violence. "The function of a military force is successful armed combat. The duties of the military officer include the organization, equipping and training of this force, the planning of its activities, and the direction of its operations in and out of combat."

In Somalia first, now in Haiti, we have violated that principle continuously. If we continue to violate that principle, it will no longer be the principal purpose of the military profession. And at that point, we will have a military profession incapable of performing its chief function, managing violence.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Di Rita appears in the appendix.]

Mr. BURTON. Thank you, Mr. Di Rita, for your comments.

Let me start the questioning by asking our military law experts, does Army Field Manual 41-10 provide any guidance about how our troops should deal with confinement facilities such as prisons, hospitals and other institutions?

Are U.S. troops required to obtain information such as names of inmates or people in hospitals? Addresses, names of the wardens? Are overall conditions of the facilities and inmates inspected in order to ensure that U.S. troops are not later blamed for any violations of human rights or inhumane conditions that should exist?

I will start with you, Colonel Black.

Colonel BLACK. Mr. Chairman, I am not prepared to go into the detail of that specific regulation. As you know, I was not notified of this proceeding until Friday, and so have not gone through the variety of field manuals, or the evidence pertaining to the specific incident.

I would say this, though. The obligations of American forces to intervene within the domestic affairs of the Haitian people and government really need to be viewed in light of the very, very brief time since they had arrived in country. The events in Captain Rockwood's case occurred just 11 days after we had arrived, and defensive positions were being set up, a very delicate shift was tak-

ing place among the authorities. And I think the time was not ripe at that point.

Mr. BURTON. Colonel Black, I am an army man. I was an enlisted man. I used to shiver when a second lieutenant walked by. I am army to the core.

The problem here is not that I don't respect the chain of command. I do respect the chain of command. I respect the military. I am probably one of the biggest supporters of the military and the Pentagon in the Congress. Look at all the awards I have won for supporting the military. I am not here to castigate the military.

However, I think it is imperative that while we support our defense, support our military and support the people who lay their lives on the line for our freedom, we must acknowledge from time to time that a mistake or two is made. You alluded to a few mistakes that have been made in the past. I think in Vietnam there were mistakes. My Lai was one. There were other mistakes, and those mistakes led to some severe criticism of certain people in the military, and some court-martials. In this particular case, as I understand it, it was not until December 19 that we started doing something about the human rights conditions and violations that were taking place in that penitentiary.

Now granted, Captain Rockwood was only there for a week or 10 days before he went in the prison, but he had been made aware of it and felt a responsibility to do something about it. I also was in Haiti, and I know the security situation.

We sent massive forces in there, and if we had wanted to go in with our military to protect and clean out that prison, I am sure that we could have done it with a minimum of risk. I would take issue with you on that issue.

What I would like to ask any one of the panelists is why it took 90 days before our military started doing something about cleaning up that prison and doing something about the obvious human rights violations that were taking place there?

Mr. DI RITA. I will start, and Captain Rockwood was obviously there, he will have a better feel for this on the ground. But it is important to remember that when the military was being deployed to go down there, when the President gave his emotional speech on September 15, they were going down as an occupation force, expecting to face combat. And my guess is, having served for an awful long time in the military myself, you develop your operation orders and your plans based on what you think the objective is. Literally, while they were in the air, and President Clinton makes a great deal of this point, while those forces were in the air the objective changed rather dramatically.

President Clinton sent people down like General Powell and Senator Nunn to cut a deal with the very forces that we were being asked to go down there and defeat militarily. So it is not at all surprising to me that, a scant 2 weeks later, or 11 days later, the military units that had been sent down for one very different objective and were basing their mission on very different objectives, were now being asked to do something rather differently.

Again, I have not read the op plans, they are classified and I wasn't part of the mission. But it is not at all surprising to me that having had this dramatic change in the nature of the operation

over a period of 48 hours between the President's speech and General Powell and Senator Nunn's agreement, President Carter's agreement, that the military was in a certain fit that this is a different mission and we have got to react to that.

Mr. BURTON. Let me ask Captain Rockwood a question. When I talked to you privately, you cited several procedures that you were required to follow before you take certain steps to look into alleged human rights violations in facilities such as hospitals and prisons. Can you illuminate or illustrate the things that you did or should do before you felt compelled to do what you did?

Captain ROCKWOOD. Well, before I compelled to do what I did, I on a daily basis, for over a week, I consulted on the staff members that I have already mentioned. Not once, but almost on a daily basis. And before I undertook the action that I undertook, I ended, for all practical purposes, my military career by opposing and sending a complaint against my commander's conduct of that operation.

Mr. BURTON. I understand, Captain. But you indicated that there were certain procedures that you followed and forms that were filed with various people up the chain of command about the conditions that you thought should be investigated. Can you illuminate those?

Captain ROCKWOOD. Right. The information I received was as an intelligence analyst.

Mr. BURTON. This was within your jurisdiction?

Captain ROCKWOOD. Within my jurisdiction. One thing I want to make perfectly clear, that the 10th Mountain Division's mission did not change. The armed insertion, what we called the nonpermissive entry, that was a mission given to the 18th airborne corps under General Sheldon. We were to be the follow-on. The armed insertion was never our mission. The 10th Mountain Division was picked for this mission because of our experience with operations other than war in Somalia. So that contention that we did not have the background, we were not prepared, if we were not prepared, there is no division in the U.S. Army that was prepared.

Mr. BURTON. Maybe I am not making myself clear. Can you tell us how you informed your superiors of the alleged violations that were taking place? What forms did that take before you went over to the prison?

Captain ROCKWOOD. All right, Congressman.

My job as a counterintelligence officer on General Meade's staff was to summarize the intelligence activities over the last 24 hours and help plan activities for the next 24 hours. So now this information came to my attention as I was providing these reports.

I summarized this information on Haitian violence and submitted it to the various staff officers. That was corroborated by the operational report from Les Cayes and also corroborated by intelligence report we received from the Pentagon on the 30th of September. So this information, I was told—I was never told that I was not to conduct the coordination for this mission. For as far as intelligence personnel, I already had a commitment.

I had the linguist and the intelligence personnel who were going to go to the prison, talk to the prisoners, and get an accountability, which meant what is the population of the prison and what are the identities of the prisoners being held. The problem is we could not

get a security escort for those intelligence personnel. And that was why the mission was not carried out. For that, I had to coordinate with other staff sections to get that security escort. And that is where I ran into the indifference.

Mr. BURTON. I will get my further questions after my second round. Did you have any question?

Mr. BALLENGER. No, Mr. Chairman. I would like to commend you for this. This is all new to me.

I am afraid I didn't read the stories in the paper and so forth, and it is fascinating to me. I guess, Mr. Browne, I would like to ask you a question, to see if you think I am spinning my wheels.

A lady who is a mayor of a little town in northern Haiti came to see me and my wife, because I have a history of trying to help out people in Central and South America. She asked me, could you help us out? I said sure. What can I do? She said our school system is in terrible shape, can you help us? And I said, well, what do you need? And she said could you get us pencils and paper?

And you know, when you get right down to the nitty-gritty and people don't even have pencils and paper for school, you figure things are pretty bad. So I asked pencil companies to donate the pencils, and paper companies to donate the paper, and I am getting ready to send them to Haiti. But do you think I am wasting my time if the situation appears to be as bad as some of the people are saying it is right here, right now? Am I wasting time or should I try to help these folks?

Mr. BROWNE. No, you are not wasting time for the students who receive those supplies. We had the same issues in training the police in Haiti. They had no radios, they had no weapons, they had no cars. If they have those things, they will become better policemen. If your pupils get writing utensils, some of them may have a chance.

I just wanted to also respond to the chairman's question about waiting for 90 days. In fact, the next day, or that night, on October 13, the U.S. Army did provide military escort for the International Red Cross to go to the prison. And I believe it was a captain or a Major Smith from Fort Drum spent, I am guessing now, upwards of 12 hours with me personally, long into the night, to arrange those, to arrange for that medical treatment.

The worst conditions that I think both Captain Rockwood and I observed were in the infirmary, where people were badly emaciated. And since the hospitals in Haiti will not take prisoners, in fact they will not take anyone who doesn't pay, and there was a reluctance to have them evacuated there in the first place, the Red Cross arranged to have medical treatment brought into the prison. And things did improve by October 14, and that was done with the assistance of the U.S. military.

Mr. BURTON. Do you have further questions?

Mr. BALLENGER. No, no, thank you, Mr. Chairman.

Mr. BURTON. Let me just follow up then.

Captain Rockwood went into the prison on September 30. You went into the prison on October 13 or 14. That is 3½ to 4 weeks after the invasion took place. Why did we wait that long to go into the prisons, when we knew the conditions were that bad? And

number two: we didn't start regular monitoring of the prisons until December 19, which was about 3 months after we landed there.

Mr. BROWNE. Well, in my case—we were there to monitor the police on the street. The reason I went—I wasn't waiting for 4 weeks. Our purpose was to stop a crowd from taking the prison, basically. That was the sort of purpose for the inspection.

Mr. BURTON. I understand.

Mr. BROWNE. When it came to our attention, the police monitors' attention of some of the problems there, we subsequently assigned an inspection team of police officers reporting to the police monitors. And they went back to the National Penitentiary on November 14 and again on December 19.

We had regular meetings with the Red Cross to—and discussions with the Haitian Government about conditions there. So, now, I believe when you are talking about December is when the 10th Mountain moved into the National Penitentiary in a big way. But it is not that we were aware of bad conditions and did nothing about it. Quite to the contrary, we did what we could through the use of the humanitarian organizations in Haiti.

Mr. BURTON. I was down there in February, 5 months after we landed. I went into that prison and there was still, against that wall, this excrement and garbage; and the living conditions were absolutely deplorable. If improvements had been made, I shudder to think of what it was like before I got there. This was 5 months later.

It seems to me inconceivable that it took that long when we had that many troops on the ground and we had the cooperation of the local people. We were paying people through AID to pick up garbage down there. Why we couldn't have done something through our military system to clean up and make those conditions in that prison at least livable. I simply don't understand. Nobody has answered this question about Army Field Manual 41-10.

Are you familiar with that, Captain Rockwood?

Captain ROCKWOOD. Yes, I am, Congressman.

Mr. BURTON. Would you care to comment on Army Field Manual 41-10 and what that requires or gives a military officer latitude to do?

Captain ROCKWOOD. In that manual, it provides a checklist for the civil military affairs section, what they are required to do in any operational situation, whether it be an operation other than war or armed conflict. This is doctrinal guidance, provided to military officers in that function. They are required to maintain a database, an information on prison conditions, to include the identity of prisoners and the number, and this is what was not done for these 3 months.

Even General Hill of the 25th Infantry Division, who took over the control of the MNF 5th of January, admits to this. They did not know who was being held in that prison. As a matter of fact, 85 percent of the prisoners in there were not convicted of anything. They did not know what they were being held for. They were held in those conditions for 3 months.

Mr. BURTON. Well, it is worse than that, because when I was there in February, I was told by our military people and I was told by people in the prison that there were still people there they

didn't know what they were doing in there, why they were charged, or if they were charged at all. I had a lady come up to me asking, "When do I get out? What am I doing in here?"

So it seems to me that that responsibility was either ignored or was not carried out.

I apologize once again for our committee members not being here and for us having to go to this retreat, but let me just say this. As a person who was in the Army myself, and I am very proud of that fact, I think it needs to be said very clearly that we should support the military, we should support the chain of command and we should support the legal process in the military.

However, there are cases where there is occasionally a dereliction of responsibility. Where, for one reason or another, military requirements are not carried out properly. In those cases, it is incumbent upon the Congress not to try to undermine the military. We don't want to do that, because we do have great respect and admiration for the people who serve and lay their lives on the line for this country.

But if these mistakes do take place, they need to be corrected. President Clinton has a penchant for getting us involved in areas where many of us in Congress don't think we should be involved. Haiti is one of these areas. Since he has taken that kind of initiative on more than one occasion, and probably will do so in the future, we need to make sure when we go into an area that we do the things that are required and are proper to make sure that human rights violations do not occur, and that people do not suffer unnecessarily when we have control of the situation.

It is clear to me that we had control of Port-au-Prince. We had control of those prisons and we should have done something about it. I am not going to judge Cpt. Rockwood or to get into the military court-martial procedure, because that is not my purview, and it is not my responsibility. But I do believe, as a person who is a member of the Human Rights Caucus in this Congress and is chairman of this subcommittee, and a person who is charged with responsibility of working with governments all over this hemisphere, that when we become involved militarily, our military leaders have a responsibility as quickly as possible to get into hospitals and penal institutions and make absolutely sure that human rights are not violated.

In this particular case, I personally saw deplorable conditions where people who were not charged with any crime were living in hellacious conditions 5 months after our occupation. If I had been in the military and if I had known about these conditions and if I had thought there was anything that I as a military man could do to rectify the situation, I think I would have been compelled to at least try.

As I understand it, Captain Rockwood did bring this prison to the attention of his superiors, and he was told not to go in there. He got direct orders not to be involved in this situation. I respect the chain of command and respect the orders, however, in retrospect, we now know that when people went over there, like Captain Rockwood, we did find deplorable conditions which should have been corrected as quickly as possible after we took control of the operation on the ground.

Let me just conclude by saying that I hope if this hearing doesn't do anything else, it will at least alert the Pentagon and the future commanders of these forces, to make one of their top priorities when they take control of a military situation, to go into the hospitals and the prisons; and to make sure that the conditions are livable as quickly as possible. This should be done bearing in mind that many of them are convicted criminals, some were political prisoners; but that we should make absolutely sure as a country, as a government and as a military, that we correct those situations as quickly as possible so the people don't suffer unnecessarily after we take control of the situation.

When I found out that people had been standing for months in their own excrement in a room filled with 300 to 500 people, I thought, my God, what kind of human beings do we have in this world? God must look down from heaven and ask, "Why did I ever put humans on this planet?"

Once our military takes control of a situation, those kinds of intolerable conditions must be removed as quickly as possible.

And with that, I want to thank you all very much for being here. I wish you well in your court-martial. I hope we have not impinged upon the authority of the Department of Defense and the court-martial trial, but at least I hope we have brought attention to the American people and to the military, our concern as a Congress about human rights violations that take place in institutions when we take control of a situation on the ground.

And with that, thank you very much for being here. This meeting stands adjourned.

[Whereupon, at 11:12 a.m., the subcommittee was adjourned to reconvene at the call of the chair.]

APPENDIX

Testimony of Paul J. Browne

**Vice President, The Investigative Group
Former Deputy Director, International Police Monitors, Haiti**

Mr. Chairman, members of the Committee, my name is Paul J. Browne, I served as Deputy Director of the International Police Monitors in Haiti from October 3, 1994 to March 31, 1995- the six-month period that the police monitors were deployed in Haiti as part of the American-led Multinational Force. I served previously as Assistant Commissioner in the New York City Police Department under former Commissioner Raymond W. Kelly. Mr. Kelly was Director of the International Police Monitors.

The monitoring force was comprised of approximately 1,200 police professionals and interpreters from 20 nations around the world. The police monitors stopped human rights abuses by the Haitian police, established and mentored an interim force, and paved the way for a new, professionally recruited and trained police department. Our duties were assumed by the United Nations Civilian Police on March 31.

On October 13, last year, 10 days after I arrived in Port-au-Prince, I was on patrol in the vicinity of the Penitencier National, Haiti's national prison, when I monitored radio traffic alerting me to the fact that a large, threatening crowd had assembled outside of the prison.

I responded to the scene and observed a crowd of up to a thousand people filling the sidewalks and street in front of the prison. Another International Police Monitor patrol had responded, as did U.S. Army Military Police, who took up protective positions in front of the prison entrance.

A rumor had spread through the crowd that the prisoners inside were being starved to death, and that 52 inmates had been killed. I found that interesting, but not particularly alarming since an nearly identical rumor, subsequently proved to be untrue, had circulated a few days earlier in Carrefour, an area just outside of Port-au-Prince.

The Carrefour rumor led to a similar demonstration in front of the jail there. In that case, the police monitors had invited a few civilians from the crowd to inspect the jail with them. In this way, the civilians helped document that the rumors were unfounded, and the tactic helped restore order in Carrefour.

An MP officer in front of the national prison, who was familiar with the strategy, asked if I could use it again, to help peacefully disperse the crowd. I selected three individuals, at random from the crowd of demonstrators, and they accompanied me on a cell-by-cell, room-by-room inspection of the prison.

No one was found dead, and none of the prisoners we talked to reported any killings or other physical abuse. But conditions inside the prison were medieval, nonetheless. The prison was crowded, - up to 300 prisoners in one large prison block - and there was no running water or sanitary facilities in the cell - a just a hole in the corner where prisoners would urinate. Toilets in poor condition were located in the prison yard.

Most prisoners relied on daily visits by family members or friends to get fed. All of them had been receiving food daily, either by relatives or guards, the prisoners said, except for the day in question, October 13. When I brought this to the attention of the prison superintendent, a Major St. Just, he said he was afraid the large crowd outside would overrun the prison if he allowed family members with food to gain entry. I asked him if he would invite relatives inside if we dispersed the crowd. He agreed.

And that's eventually what transpired. The civilians who accompanied me reported to the crowd what they saw inside. The crowd dispersed, and family members lined up in an orderly fashion, and were allowed to bring food to their incarcerated relatives.

However, I also inspected the prison infirmary and found at least three inmates who appeared emaciated and in need of immediate medical attention. Although this too was seen by the civilian witnesses, they did not appear to be disturbed by it. They reported to the crowd that they saw a few people who were sick and lying down in the infirmary. I called for local ambulances to evacuate these prisoners to area hospitals, but when the ambulance crews saw the crowds in front of the prison (the ambulances had arrived before the crowd dispersed), they feared that the evacuation of the prisoners would spark a serious disturbance. So they left.

By about midnight, after a day of working with U.S. Army and U.S. Embassy personnel to try to get the ambulances to return, we finally assembled a medical team from the International Committee of the Red Cross and a military escort provided by American MPs, and returned to the prison. There the officer on duty would not open the gate. So at about 1:00 a.m. or 1:30. a.m. on April 14, I reached the prison superintendent by telephone at his home, woke him up, and he finally agreed to allow the Red Cross team to enter the prison later that morning, at about nine o'clock.

Since the hospitals in Haiti routinely refused to treat prisoners, and the prison administration appeared unable to provide appropriate medical care, the Red Cross devised a plan to provide for treatment inside the prison by making improvements to the infirmary and having visiting doctors and/or nurses deliver medical care.

I also arranged to meet periodically with the head of the International Committee of the Red Cross in Port-au-Prince to report on medical or health-related issues in jails that we came across in the course of our police monitoring duties. Where the police monitors or military personnel encountered problems they could remedy immediately or temporally, we did so. This included providing cots for prisoners who were sleeping on the ground, or meals once a day. We were concerned that two meals a day would lead to prison "break ins" by hungry Haitians living near some of these jails.

The International Police Monitors also established a prison inspection team, comprised of three, senior Danish police officers whose sole responsibility was to inspect the jails throughout Haiti. They documented the inadequate to non-existent record keeping that made it virtually impossible to tell who was in prison, why they were there, or for how long. These problems were subsequently addressed by the Government of Haiti, which dispatched a special judge to the national prison to release prisoners whose reason for continued incarceration could not be documented or justified.

The police monitors' report, completed in February, was shared with Government of Haiti, the Red Cross as well as American, United Nations and non-governmental organizations with an interest in prison issues. I am submitting a copy of that report for the record.

By the time we left Haiti, prison conditions had improved and were being reviewed weekly by a multi-national working group that included Red Cross, U.S. Army and United Nations officials.

I've been asked, Mr., Chairman, if I was shocked at conditions inside the national prison. By American standards, of course I was. But for the poorest country in the hemisphere, whose ordinary citizenry lived without potable water, with open sewers coursing through their slums, and without electricity most of the time, I was not surprised that the prisons in Haiti were just as bad.

Thank you. Now I'll be happy to answer any questions you may have.

STATEMENT OF LAWRENCE P. ROCKWOOD, CAPTAIN, US ARMY
 FORMER JOINT TASK FORCE 190 COUNTERINTELLIGENCE OFFICER
 BEFORE
 THE SUBCOMMITTEE ON WESTERN HEMISPHERE,
 COMMITTEE ON INTERNATIONAL RELATIONS,
 US HOUSE OF REPRESENTATIVES
 MAY 3, 1995

First of all, I would like to thank the Chairman of the Subcommittee on Western Hemisphere, Congressman Dan Burton and the other members for giving me the opportunity to present my testimony here today. I am submitting for the record this statement, with enclosures.

I am facing a court martial for my actions as a counterintelligence officer with the 10th Mountain Division while serving in Haiti. The subject of your hearing, however, is not my actions, but rather the extraordinary INaction on the part of my superiors. In my statement I will try to demonstrate that while in Port-au-Prince I witnessed, and attempted to stop, dereliction of duty if not criminal negligence on the part of my superiors.

Last September 15, the President announced that the primary objective of the operation Uphold Democracy was "to prevent the brutal atrocities against Haitians" and, bearing in mind my military oath to the Constitution and the Commander-in-Chief, I took his words at face value.

As I assumed my duties in Haiti on September 23 I was informed that 'force protection' was to be the focus of our efforts. In spite of this, it became immediately apparent to me that the main content of the reports that reached me centered on human rights violations against Haitian slum residents rather than any threats directed against our forces. This discrepancy was what triggered my week long odyssey through all possible instances to awake interest of the commanders and staff of the Multinational Forces in human rights violations.

On the morning of September 25 I met with the command's Chaplain to discuss reports on deteriorating human rights situation in Port-au-Prince slums, but the chaplain did not want to get involved in a "political" problem. Later that evening I went to Staff Judge Advocate's (SJA) or the legal department and asked for The Laws of War manual, the 1977 Protocol to the Geneva Convention or the report on the UN High Commission for Human Rights Conference held in Vienna in 1993. The only available reading material on human rights was an Army Field Manual from 1954.

Next evening I went back to SJA to complain about the lack of positive action of the US forces in support of human rights. (The log of SJA - encl number 1 - says "CPT Rockwood seemed very concerned about alleged human rights violations going on in Haiti.")

After finding out that no inspection or regular monitoring of prisoners being held by the Haitian military had taken place since the arrival of U.S. forces over two weeks ago I tried unsuccessfully to get the Civil Military Operations Center interested in surveying the penitentiaries.

In fact it is a duty of the army's Civil affairs to monitor and check out the detention centers. The Civil Affairs Operations manual (FM 41-10) for the US Army, - encl number 2 - Chapter IX (Public Safety) under heading "c" contains penal institutions such as prisons and jails and says literally: "The primary consideration in this area is whether the existing institutions [police, fire and penal] may be used to carry out the combat commander's primary mission and to provide the day-to-day control and bodily protection of the local population." Was it unreasonable to expect that a monitoring of the prisons and jails would start "to provide the day-to-day control and bodily protection of the local population"?

Similarly, the Civil Military Operations Handbook of the 10th Mountain Division - encl number 3 - under "Law Enforcement Agency Checklist" entry number 9 has "Confinement facilities" and it enumerates the information which the 10th Mountain Division staff should obtain in the confinement: "names, address, grid coordinate, telephone number, type of facility, maximum capacity, present capacity, number of guards (adequate Y N), capacity of kitchens, name of warden, overall condition of facility and inmates." Under the circumstances I continued to believe that it is not only reasonable but nearly inevitable that the civil affairs of the 10th Mountain Division would be required to obtain this information?

On the evening of September 27 I attempted to organize an intelligence team to check out these prisons but I had to ask the military police for the escort. But the military police was concerned only with FAD'H police functions (joint patrols and police station monitoring) and refused.

It should be noted here that September 27 was the day when the US troops arrived in the southwestern town of Les Cayes and discovered a prison where over 30 men were crammed into a cell no larger than 15-feet square. They were so malnourished that - as with concentration camp victims of WW2 - their food intake had to be increased gradually to avoid harming them. When the American soldiers removed one invalid from the prison, they discovered that he had lain for so long in one position that some of his skin had fallen off.

The same evening I approached a UN Military Observer to discuss my human rights concerns. The UNMO said they couldn't do anything without the US Forces'

approval and he told me that the High Commissioner for Refugees, the UNHCR, would not arrive in Haiti until October 13. The next morning a liaison officer of the Special Operations informed me that my unit was not to take action; they were not in other words to inspect the prison or to even find out who the prisoners were and how many were in the prison.

Meanwhile an answer arrived from the Pentagon for a high priority request that I made on August 10, 1994: it confirmed that there was a real danger of abuses in Haitian prisons.

At this point I thought that I had exhausted all means at my disposal to alert all sections of the Joint Task Force to human rights abuses in Haitian penitentiaries. I therefore turned to the Inspector General and deposited my complaint, which alleged that the command had subverted President's primary mission intent concerning human rights - encl number 4. The IG suggested that it be anonymous but there was no point because by then everyone knew about my concern for human rights. I also believed that what I was doing was legally and morally correct, and had no reason to hide my position as an officer unless of course my command was prepared to act improperly in response.

The Inspector General informed me that I have done everything a staff officer could have possibly done and it was not my job to pursue this further by addressing it to the command's Chief of Staff. I was also told that my complaint would not be brought to the attention of General Meade for at least a week.

At this point I informed my immediate superior that I feared the command could be found criminally negligent under international law and in dereliction of duties in carrying out the President's intent. I reached the conclusion that the US would bear responsibility because the human rights violations would be committed with the knowledge of the command, in the direct proximity of its forces, and by Haitian forces with whom the US had a signed agreement of cooperation.

I based my concern over the command's possible criminal negligence on the historical principles recognized in the Charter of the Nuremberg Tribunal which held commanders to be liable for failing to take action to "prevent" war crimes. More particularly, I was aware of the case of the United States Vs Yamashita. General Tomoyuki Yamashita, former commander of Japanese Forces in the Philippines was sentenced to death in 1945 by an international war crimes tribunal for his failure to protect American prisoners, even though he neither ordered nor knew of their execution by his soldiers. The sentence was upheld by the US Supreme Court. He was executed for his indifferent (although completely passive) response to human rights violations against persons protected under customary and or conventional international law, violations of which he had no direct knowledge (unlike the present case where General Meade and his staff, including

myself, had direct and specific knowledge of human rights abuses in the Haitian penitentiaries).

I also believed that the military Oath of Office not only allowed me but compelled me to place loyalty to the Constitution and the President of the United States before obedience to my immediate superiors who, I suspected were indifferent to violations of the human rights of Haitian prisoners. (This suspicion was later confirmed when, during the preliminary hearing for my court martial, the 10th Mountain Division's senior intelligence officer and my immediate superior, testified decisively that human rights violations in Haitian prisons were not a priority.)

I was aware that the action I contemplated would be considered directly challenging to my superiors' conduct of the operation, but I could find no other way to prevent ongoing human rights abuses. As a student of military history I had in the back of my head a precedent that guided me in this decision, a precedent that goes back to the blackest episode of the Vietnam war and of US army history: the My Lai massacre. A helicopter pilot, Chief Warrant Officer Hugh C. Thompson, who saw the massacre, ordered his gunner to fire on US forces who were slaughtering unarmed civilians. While he acted clearly outside the range of what is usually associated with "good order and discipline," the Army judiciously gave him an award rather than placing him before a court martial. (Mr. Thompson has agreed to be a defense witness at my court martial.)

Like Thompson I had before me the theoretical choice to do nothing or to take unconventional action knowing that I was risking disciplinary measures. But in practice I had no choice. I felt I had to act because lack of such action would have meant an acquiescence on my part to the imminent and ongoing human rights violations, and hypocrisy in the face of duty.

Thus, on September 30, 1994, I left the military compound to inspect the major prison in Port-au-Prince on my own. Two hours later I had only partially accomplished my task -- but had already found atrocious conditions and shockingly emaciated inmates. A military officer from the US embassy then arrived and ordered me out. I was taken to the military compound where my rights were read to me and where I underwent a psychiatric evaluation. My actions were determined to be not due to stress or mental disorder but an ethical dilemma. A day later I was escorted back to the States.

Meanwhile the Inspector General complaint that I filed on the morning of September 30 was closed in two days. This was in clear violation of the Army Regulation 20-1 - encl number 5 - which states that "(IGs) forward all allegations of impropriety against general officers to U.S. Army Inspector General Agency (USAIGA) Investigations Division by a rapid but confidential means, within 5

working days of receipt" (Paragraph 7-3, 1 (2)) and that "if the IG determines that the allegation would, if substantiated, adversely affect the public perception of the command's effectiveness, efficiency, readiness, training, morale, or other similar factors, the IG will promptly notify the next higher IG of the allegation. The next higher IG will determine which command IG (other than the command at which the allegation was made) should actually work the case." (Paragraph 6-4, d (5)). Last April 17, the Inspector General responded to my defense lawyer (who had pointed out to this violation of the IG regulation - encl number 6) announcing that he is opening an inquiry into the mishandling of my original complaint - encl number 7.

Only recently did I learn that the 19th Mountain Division did not start regular monitoring of this prison until December 19, 1994. In the three months between the arrival of JTF and that date there were several sporadic visits of persons more or less associated with the JTF: col. Michael Sullivan, from the 16th Military Police Brigade who in a memorandum to the Commander of JTF 190 General Meade "The appalling conditions render this facility [the National Penitentiary] unsuitable for human habitation, and this must be a priority in our efforts to assist Haiti in its return to democracy." Paul Browne the deputy head of the International Police Monitors (IPM) went there on October 14 and some inmates he found were in such a horrendous condition that he thought that they were in the last stage of AIDS. The Danish monitors from IPM also visited this facilities and considered it "the worst" of all confinement centers in Haiti.

The charges I am facing appear petty next to life-threatening human rights violations that continued in the Port-au-Prince National Penitentiary for 2 1/2 months after my attempted intervention.

There is, however, nothing petty in the charges in my official complaint initiated on the morning of September 30. The inquiry that the Inspector General of the Army, Lieutenant General Ronald Griffith opened recently will deal not only with the mishandling of my complaint but will also look into General Meade's and members of his staff's failure to address the human rights situation in the National Penitentiary and other Haitian confinement facilities during his command of the Multinational Forces in Haiti.

Meanwhile on May 8, my court martial, convened on the recommendation of General David C. Meade, will start in Fort Drum.

STATEMENT OF
COLONEL RICHARD H. BLACK (USA RET.)
TO THE SUBCOMMITTEE ON THE WESTERN HEMISPHERE
HOUSE COMMITTEE ON INTERNATIONAL RELATIONS
AT HEARINGS HELD 10:00 A.M., MAY 3, 1995
ROOM 2172 , RAYBURN BUILDING

Chairman Burton and Members of the Subcommittee:

I am pleased to appear before the Subcommittee to examine issues raised by the court-martial of Captain Lawrence P. Rockwood. Today, I will be addressing you in my private capacity and not as a representative of the Department of Defense. Let me add that my analysis of the issues is based upon press reports rather than on a personal examination of the evidence in Captain Rockwood's case. My remarks are not meant to impact Captain Rockwood's trial in any fashion, but are simply intended to provide background regarding military justice in the operational setting of Haiti.

Charges are lodged against CPT Rockwood for unlawfully slipping over his perimeter compound fence the night of September 30, 1994 and entering Port-au-Prince, Haiti, to inspect the National Penitentiary. The charges suggest that he violated orders regarding security measures to be observed outside the compound. Additionally, he is charged with disrespect toward a superior officer, LTC Frank Bragg, by contemptuously and belligerently yelling, " I want a full accounting from the Commanders, Joint Task Force 180 and 190, of the human rights violations and accounting of all the prisoners." CPT Rockwood does not deny that he knowingly violated the guidance of his superior officers.

Troops landed in Haiti to begin Operation Uphold Democracy on September 19, 1994. CPT Rockwood's actions took place during the dangerous period just eleven days after Multinational forces arrived in Haiti. Domestic support for the intervention was fragile. It was evident that Americans felt the operation did not warrant U.S. casualties, so security concerns were paramount. Our "permissive entry" was made with the agreement of both the de facto and the de jure governments of Haiti. We were not in a state of belligerency, and the extent of our influence over the affairs and personnel of the Haitian government was in a state of transition.

Port-au-Prince was in a state of civil unrest. On September 29, the day before CPT Rockwood's surreptitious nighttime departure, the multinational force responded to a grenade attack and two shooting incidents in that city which left 16 Haitians killed and 60 wounded. The potential for a widespread outbreak of violence was substantial. A misstep at that moment might have set in motion a chain of events leading to loss of American lives and collapse of the entire mission.

That the entry into Haiti has, to date, involved so little bloodshed, is a tribute to the deliberate and orderly development of a secure base of operations and to the delicate shift of power between the Haitian political factions and the Multinational Force. The superb discipline of Army forces accounted in large measure for the success of this somewhat thankless venture.

Discipline and obedience to orders, conveyed through a well-defined chain of command, are factors which distinguish a military force from an armed mob. Responsiveness to commands relayed from the civilian leadership through the Department of Defense is essential under our constitutional form of government. The national government must remain confident that actions taken by military forces correspond to, and do not exceed, the directives of the political leadership. If military forces act beyond the scope of specific directives and the rules of engagement approved by national authority, they risk embroiling America in armed conflicts not sanctioned by our government.

No officer has a right to disregard lawful orders of superiors. (Title 10 U.S.C. sec. 890, Article 90, Uniform Code of Military Justice). An order requiring the performance of a military duty or act may be inferred to be lawful and it is disobeyed at the peril of the subordinate. [Manual for Courts-Martial, United States 1984 (hereafter MCM), Part IV, para. 14c.(2)(a)(i)]. The dictates of a person's conscience, religion, or personal philosophy cannot justify or excuse the disobedience of an otherwise lawful order. [MCM Part IV, 14c.(2)(a)(iii)]. As long as the order is understandable, the form of the order is immaterial, as is the method by which it is transmitted to the accused. [MCM Part IV, para. 14c.(2)(a)(iv)(c)].

CPT Rockwood, however, argues that he acted under various higher authorities, including the Dalai Lama--his "spiritual teacher." He points to a speech in which President Clinton said our national objectives included "stopping brutal atrocities." He believes that the President's general guidance superseded specific orders from his immediate superiors.

It is true that an order is not lawfully binding if it is in conflict with the lawful order of a superior authority. [See generally *U.S. v. Green*, 22 M.J. 711 (A.C.M.R. 1986)]. An order or regulation is not lawful if it is contrary to the Constitution, the laws of the United States, or lawful superior orders. However, before a President's policy guidance can legally amount to a contrary regulation or order, it must first meet the criteria of enforceability under Article 90 or Article 92, UCMJ.

To be considered a conflicting order under Article 90, UCMJ, the President's guidance must have been a specific mandate to do, or not to do, a specific act. [MCM Part IV, para. 14.(c)(2)(iv)(d)]. Under MCM Part IV, para. 16c.(1)(e), "Regulations which supply only general guidelines or advice for conducting military functions may not be enforceable under Article 92(1)." The analysis at MCM App. 21, para. 16, pg. A21-92, states: "The general order or regulation violated must, when examined as a whole, demonstrate that it is intended to regulate the conduct of individual servicemembers, and the direct application of sanctions for violations of the regulation must be self-evident." [*United States v. Nardell*, 21 U.S.C.M.A. 327, at 329; 45 CMR 101, at 103 (1972)].

The President's general policy guidance did not meet the criteria for either a lawful general regulation or an "other" lawful order. In my view, the President's policy statement provided no legal justification for any officer to disobey orders of immediate superiors in the 10th Mountain Division.

Several newspapers have published articles based on interviews with CPT Rockwood. ("Duty to Disobey," *The Washington Post*, Feb. 6, 1995; "An Order Fit to Be Disobeyed," *Los Angeles Times*, Mar. 16, 1995; etc.). In them, he claims the Vietnam-era My Lai trials and the post-World War II trial of General Tomoyuki Yamashita provide justification for intentional disobedience of orders in situations where human rights are endangered. But we must question whether this is true when American forces are neither engaged in armed conflict nor participating in the commission of any suspected criminal acts. Does international law compel U.S. forces to intervene immediately in the internal affairs of sovereign states whenever they suspect prisoners are being mistreated?

The crimes involved in the My Lai incident were committed by American soldiers--not foreign nationals. And, When Japanese General Yamashita was hanged after World War II, he was being punished for widespread, vicious crimes committed by soldiers under his command. He was not punished for failing to halt abuses committed by foreign nationals. An American officer might, under unusual instances, be held criminally responsible for violations of law committed by his subordinates. However, officers are not responsible for rectifying violations committed by foreign officials not subject to their direct control. We cannot allow servicemembers to act unilaterally to correct human rights abuses in countries where they are stationed. Military officers serve as attaches in many of the world's capitals. Unilateral attempts to force our standards of human rights on the Peoples Republic of China, Mexico, or Saudi Arabia would obviously be counterproductive. Overreaching during the first days following our arrival in Haiti could likewise have had unfortunate results.

CPT Rockwood's unusual undertaking might have had catastrophic results. Although we can only speculate regarding potential consequences, they could have spelled disaster for the entire operation. When he arrived unannounced at the prison, he could have provoked a shooting incident. He was armed with an M-16 and reportedly entered, "... by literally placing my boot in the door." Had an exchange of gunfire resulted, it might have triggered an attack by one of the edgy, armed factions in Port-au-Prince. His actions could have triggered a prison riot. U.S. forces might have been compelled to intervene with subsequent loss of American lives.

CPT Rockwood's superiors were responsible for anticipating threats to the successful execution of the mission. They were required to implement measures minimizing the danger to their troops in a manner consistent with national objectives. Troops must be tightly controlled in volatile situations in order to avoid needless, unintended risks.

The commanders of the 10th Mountain Division were apparently sensitive to CPT Rockwood's idealism. Although they were not required to do so, they attempted to explain their actions to him. He was allowed to air his concerns within his chain of command, with the legal officials of the Staff Judge Advocate, with a U.N. military observer, and with the Multinational Force Inspector General. CPT Rockwood would have us believe that none of these individuals shared his superior sense of compassion.

When his reckless vendetta eventually forced his command to discipline him, they did so in a measured fashion. They reportedly offered him nonjudicial punishment under Article 15, UCMJ. (Title 10 U.S.C. sect 815). This modest punishment might have kept his military career intact, while reinforcing the principle that officers of the division could not arrogate power unto themselves. CPT Rockwood refused to argue his case at this lower-level forum, instead choosing to demand trial by court-martial. Next, the command offered to allow him to resign from the Army in order to avoid the stigma of a court-martial conviction. He declined the offer. The command appears to have taken carefully measured steps to balance the equities of the case with the need to maintain discipline within the division.

Having elected trial by court-martial, CPT Rockwood will have the right to air fully his claims before a military court. The court will be conducted under laws and regulations carefully crafted by the U.S. Congress and various Presidents. His assertion that human rights provisions and President Clinton's comments justified his actions will be fully litigated. If found guilty, he can appeal to the court-martial convening authority, then through two levels of appellate courts to the U.S. Supreme Court.

Americans continue to question our involvement in Haiti. They are deeply distrustful of the United Nations, and have little regard for their peacekeeping missions. But they credit our servicemen and women with making the best of a difficult situation in Haiti. They respect those who carry out these difficult, unrewarding tasks with professionalism. While political leaders debate the merits of intervention in foreign lands, the Department of Defense must have congressional support to maintain order within its ranks.

I applaud the men and women who have served in Haiti. I complement their superb leaders, who have persevered throughout this difficult endeavor. In closing, I thank the Chairman and each of the members of this Subcommittee for allowing me to appear here today.

How Non-Traditional Operations Can Undermine The Military Chain of Command

Lawrence T. Di Rita

Deputy Director, Foreign Policy and Defense Studies

The Heritage Foundation

Testimony before House Committee on International Relations

Sub-Committee on Western Hemisphere

May 3, 1995

The November 1994 elections reflected public dissatisfaction with the way Washington works. Voter confidence in government has declined steadily as one federal program after another has proven ineffective in solving a growing number of problems from crime to falling educational standards and moral decay. With few exceptions, government institutions are under intense public scrutiny; the pledge by some in Congress to eliminate at least four cabinet agencies reflects as much.

One exception is the military. No other government institution commands as much respect and admiration by the public than their armed forces. A March poll by the Council for Excellence in Government placed public confidence in the military at 59 per cent, nearly twice the next highest scoring government institution. Having emerged from the Vietnam era profoundly affected by the turmoil in American society produced by that war, the U.S. military is now seen as the most competent and professional element in all of government. Indeed, from Grenada to Libya to Panama to the Persian Gulf, America's armed forces have justified the high confidence citizens place in them.

Because of this modern tradition of professionalism in the military services, elected officials have turned to them more readily to address problems that go beyond their traditional competency. For example, the military has been increasingly involved in the nation's war on drugs. On any given day, Navy ships patrol the Caribbean seeking out suspicious vessels that may be transporting drugs to the United States. The Air Force dedicates surveillance aircraft to monitor the airways into the country, while the Army provides training and direct assistance to Latin American military forces pursuing narcotics processors and traffickers in their own countries.

The same is true for humanitarian assistance. When famine or environmental disaster strikes anywhere in the world, American leaders frequently turn to the U.S. armed forces to provide an immediate response to ease the human suffering. In April 1991, a devastating cyclone and subsequent flooding in Bangladesh took 138,000 lives. President Bush dispatched 8,000 American troops, including many returning home from Operation *Desert Storm*, to deliver relief supplies and help save countless thousands of lives. Nearly two years later, President Bush sent some 20,000 troops into Somalia to feed the starving there after civil war and drought threatened to take hundreds of thousands of additional lives.

Given the public confidence in the military, together with the unique skills and capabilities the armed services can provide, it is tempting indeed to turn to them when a difficult problem arises for which there is no ready solution. With the end of the Cold War, this temptation has grown as international problems have become more intractable and the desire for a quick solution intensifies. Moreover, some have argued -- wrongly,

to my mind -- that using the military in less traditional ways than warfighting is a reasonable justification for continued large, albeit declining, defense budgets. As a direct result of these tendencies, the use of the military in so-called operations other than war has increased dramatically since the end of the Cold War. In 1991 alone, the U.S. armed forces provided non-traditional assistance to some eighteen countries around the globe, more than in the previous five years combined.¹

It is in this light that one must evaluate the U.S. occupation of Haiti in September, 1994. For the second time this century, an American president dispatched troops there to impose democracy on a country that has shown little willingness or capability to sustain its own democratic traditions. Although the mission of the forces sent to Haiti was to "restore democracy," as the operation itself was called, it was never clear exactly how that mission was to be carried out. Nonetheless, politics and diplomacy having failed, this difficult political mission was turned over to U.S. forces to resolve.

Operation *Restore Democracy* should be seen as a logical consequence of the Clinton Administration's foreign policy. Beyond even the non-traditional use of the military as discussed above, the Clinton Administration has committed itself to a national security strategy of "engagement and enlargement," in which it concludes that a central goal of the United States is "to promote democracy abroad."² To do so, the administration declares that U.S. forces must be ready to "bolster new democratic governments," such as that represented by Jean-Bertrand Aristide in Haiti. Having been overthrown by a military coup in 1991, Aristide was carrying on the tradition of Haitian presidents, some 75 per cent of whom were similarly deposed from office in the nearly two hundred years of Haitian "democracy." It was Aristide, not democracy, that President Clinton was committed to restoring, through force if necessary.

The Clinton Administration's preference for the use of military force to resolve challenging overseas political crises such as that represented in Haiti did not begin there, though. Within months of assuming office, the administration had expanded the mission of U.S. forces in Somalia -- a situation administration officials rightly claim to have inherited from their predecessors -- from one of feeding the poor to that of nation-building, in the words of Clinton's U.N. Ambassador Madeleine Albright.³ But U.S. forces proved manifestly incapable of building a nation where warlordism was the only political philosophy. The deaths of 18 U.S. Rangers in a failed attempt to capture clan leader Mohammed Farah Aideed in October 1993 led to an ignominious U.S. retreat and eventual withdrawal.

Despite the failure in Somalia, the administration has set the stage for a similar embarrassment in Haiti. The success or failure of U.S. attempts to restore democracy there rest on the abilities of President Aristide to develop a governing consensus the likes of which that nation has never seen. In his first installment in office from January to September of 1991, Aristide proved incapable of doing so. Instead, his calls for direct

¹ Thomas P. Sheehy, "No More Somalias: Reconsidering Clinton's Doctrine of Military Humanitarianism," Heritage Foundation *Backgrounders* Nr. 968, December 20, 1993.

² The White House, *A National Security Strategy of Engagement and Enlargement*, February, 1995, p. i.

³ Madeleine K. Albright, "Yes, there is a reason to be in Somalia," *The New York Times*, August 10, 1993, p. A19.

political action by the largely destitute masses over the heads of their elected officials in parliament led to a political polarization and incitement to violence by many of Aristide's supporters. Some charge the president himself with encouraging violent acts against legitimate government opposition.⁴

Since his reinstatement at the point of U.S. guns, Aristide's performance has been no more promising than during his first stint. He has exerted a stranglehold on Haitian politics by packing the nominally independent electoral commission with close allies, forcing the resignation of the Minister of Justice who opposed his heavy-handedness, repeatedly postponing local elections, and dissolving the elected parliament.⁵ U.S. forces, most of which have been withdrawn, are now part of a multinational occupation force that will remain in the country at least until the presidential elections scheduled for December, 1996.

Having disarmed the Haitian military and reinstalled President Aristide to power, U.S. armed forces and, by extension, the U.S. government, are now directly responsible for the future of Haiti. Dependent as it is on Aristide's capricious disregard for the electoral timetable to which the occupation force is now a hostage, the Clinton Administration can offer no reasonable assurances that it can avoid in Haiti what it allowed to happen in Somalia. Indeed, there are indications that the tragedy of Somalia -- the misapplication of American military capabilities to non-traditional assignments -- may be repeated in Haiti.

One indication is the pending court-martial of Captain Lawrence P. Rockwood, a military intelligence officer assigned to the 10th Mountain Division in Fort Drum, New York and dispatched to Haiti in September 1994. Within two weeks of the American occupation, Captain Rockwood entered the National Penitentiary in Port-au-Prince to investigate charges of human rights abuses, one of the putative missions of the U.S. forces. His inspection visit had not been approved by his superiors. In his own words, he had "for one week tried in vain to organize an inspection of the National Penitentiary," the well-known site of some of the worst of the brutal atrocities he thought he had been sent to stop.⁶ He acknowledges having disobeyed orders not to leave his compound, but decided that "the military oath of office not only allowed but compelled [him] to place loyalty to the Constitution and the president of the United State before obedience to...immediate superiors."

For having been placed in the position of having to choose between his conscience and his commanders, Captain Rockwood faces a court-martial and a felony conviction if found guilty of dereliction of duty and conduct unbecoming an officer. The merits of his case go beyond this discussion. He is aware that his actions, as he put it, "would be viewed outside the range of what is usually associated with 'good order and discipline.'" ⁷ In any event, the military court system can be trusted to render justice in

⁴ For a full discussion of some of Aristide's more inflammatory comments, see Lawrence T. Di Rita, "Aristide In His Own Words," Heritage Foundation *F.Y.I.* Nr. 37, September 16, 1994.

⁵ John J. Tierney, Jr., "Democracy a Casualty of Aristide's Bid for Power," Heritage Foundation *Background* Nr. 241, February 28, 1995.

⁶ Lawrence P. Rockwood, "Court-Martial: A Soldier's Story," *The Wall Street Journal*, April 4, 1995.

⁷ *Ibid.*

accordance with military law, regulation, and custom. His court-martial is scheduled for May 8, 1995.

Regardless of how the court decides the Rockwood case, though, it contains as valuable a lesson as that learned by the deaths of American servicemen in Somalia. Incidents like these will become more common as military forces are placed in ambiguous situations that stray from those missions for which they are trained, namely to win wars in the defense of the national interest. Indeed, the ambiguities attendant to the types of situations in which Captain Rockwood and other military professionals have found themselves of late has become official government policy. In its publicly disseminated analysis of the classified Presidential Decision Directive (PDD)-25, which addresses United Nations peacekeeping operations and is the product of over one year of inter-agency analysis and consultation, the administration gives U.S. commanders assigned to U.N. forces the authority to disregard the orders of their U.N. superiors under a variety of circumstances.⁸ Such institutionalized ambiguity will only ensure more situations such as the Rockwood incident.

In the classic American treatise on civil-military relations, Professor Samuel Huntington concludes that the expertise of officership in the U.S. armed forces is best summarized as "the management of violence." As such, Huntington determined that

"[t]he function of a military force is successful armed combat. The duties of the military officer include: (1) the organization, equipping, and training this force; (2) the planning of its activities; and (3) the direction of its operation in and out of combat."⁹

This has not changed just because the Cold War has ended. If anything, the end of the Cold War has given the United States a certain freedom of action to use its military even in traditional missions that would have been unimaginable when the east-west confrontation prevented them. With that freedom comes a responsibility to remember Huntington's conclusions and to be disciplined in their application. By contrast, the Clinton Administration embrace of non-traditional military missions reflects its readiness to ignore them.

⁸ "The Clinton Administration's Policy on Reforming Multilateral Peace Operations," May 1994, p.10.

⁹ Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, (Cambridge, MA., 1957), p. 11.

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Tuesday, April 4, 1995

COURT-MARTIAL: A Soldier's Story
By Lawrence P. Rockwood

On Friday President Clinton, in Port-au-Prince for the transfer of our Haitian military operations to United Nations command, lavishly praised our troops' performance. In many ways, that praise was deserved. But not all was well in our mission to Haiti. I ought to know -- I am facing a COURT-MARTIAL for my actions as a counter-intelligence officer with the 10th Mountain Division. My defense will be to prove that while in Port-au-Prince I witnessed, and tried to stop, serious -- if not criminal -- negligence by my superiors.

In his address to the nation last Sept. 15, the president said the primary objective of Operation Uphold Democracy was "to stop the brutal atrocities that threaten tens of thousands of Haitians." I don't know about the officers he was shaking hands with Friday, but I took his words at face value.

After I was deployed to Port-au-Prince on Sept. 23, I assumed that the inspection of prisons would be a priority for the Multinational Forces; common sense and the regulations of the U.S. Army and of the 10th Mountain Division suggested so. Having prepared for the mission for two months at my home base in Fort Drum, I knew about the appalling record of human rights violations in Haiti. (Because the relevant intelligence material is classified, I cannot be more precise on that point.)

For one week I tried in vain to organize an inspection of the National Penitentiary. Time was passing, and I was concerned that abuses might be leading to irreversible tragedies and that we, the U.S. Army, deployed "to maintain a safe and secure environment," were letting them happen. I encountered an inexplicable indifference toward human rights violations in those serving under Maj. Gen. David Meade, and I was informed that there were no plans to seek an accounting of prisoners held by the de facto government.

Indeed, even on Feb. 22, 1995, during the preliminary hearing for my COURT-MARTIAL, Lt. Col. Frank Bragg, the command's senior intelligence officer, confirmed this indifference, testifying that human rights violations in Haitian prisons were decisively not a priority for the Multinational Forces. I later learned that the 10th Mountain Division did not go into this prison until three months after arriving in Haiti.

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I resolved to act because of my belief that the military oath of office not only allowed but compelled me to place loyalty to the Constitution and the president of the United States, my commander in chief, before obedience to my immediate superiors. Thus, on Sept. 30, 1994, I left the military compound to inspect the major prison in Port-au-Prince on my own. After I spent two hours there and had only partially accomplished my task -- but had already found atrocious conditions and shockingly emaciated inmates -- a military officer from the U.S. Embassy arrived and ordered me out. I was taken to the military compound, where my rights were read to me. A day later, I was escorted back to the States.

I am now facing poorly crafted charges based on articles from the Uniform Code of Military Justice that appear petty next to life-threatening human rights violations: I am accused of failing to go to my appointed place of duty, going from my appointed place of duty, disrespect toward and disobeying of my superior officer, and generally "conduct unbecoming an officer and gentleman."

I was aware that my actions would be viewed outside the range of what is usually associated with "good order and discipline," but I could find no other way to prevent human rights abuses. As a student of military history, I had in the back of my head precedents that guided me.

The first is from the Vietnam War -- the My Lai massacre. A helicopter pilot, Chief Warrant Officer Hugh Thompson, who saw the massacre, ordered his gunner to fire on U.S. forces who were slaughtering unarmed civilians. While he acted clearly outside the range of what is usually associated with "good order and discipline," the Army judiciously gave him an award, not a COURT-MARTIAL.

Another case concerning the laws of war was on my mind as well: that of Gen. Tomoyuki Yamashita, former commander of Japanese Forces in the Philippines. He was sentenced to death in 1945 by an international war crimes tribunal for his failure to protect American prisoners, even though he neither ordered nor knew of their execution by his soldiers. The sentence was upheld by the U.S. Supreme Court.

When I was a little boy, my father, an Air Force officer stationed in Germany, took me to Dachau and emphasized the role that blind obedience to authority played in the creation of the death camps. Twenty-five years later, should I have simply driven past Haiti's most notorious dungeon as if what was going on inside was none of our business?

Capt. Rockwood faces 10 years in prison for his actions as a counterintelligence officer in Operation Uphold Democracy.

Lawyers Committee for Human Rights



THE AMERICAS



PROTECT OR OBEY:

The United States Army versus Captain Lawrence Rockwood

A report of the Latin America and Caribbean program
of the Lawyers Committee for Human Rights

New York, May 1995

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The Lawyers Committee for Human Rights

Since 1978, the Lawyers Committee for Human Rights has worked to protect and promote fundamental human rights. Its work is impartial, holding each government to the standards affirmed in the International Bill of Human Rights, including

- * the right to be free from torture, summary execution, abduction and disappearance;
- * the right to be free from arbitrary arrest, imprisonment without charge or trial, and indefinite incommunicado detention; and
- * the right to due process and a fair trial before an independent judiciary.

The Committee conducts fact-finding missions and publishes reports which serve as a starting point for sustained follow-up work in three areas: with locally-based human rights lawyers and activists; with policymakers involved in formulating US foreign policy; and with intergovernmental organizations such as the United Nations, the Organization of American States and the Organization of African Unity.

The Committee's Refugee Project seeks to provide legal protection for refugees including the right to dignified treatment and a permanent home. It provides legal representation, without charge, to indigent refugees in the United States in flight from political persecution. With the assistance of hundreds of volunteer attorneys, the Project's staff also undertakes broader efforts -- including participation in lawsuits of potential national significance -- to protect to right to seek political asylum as guaranteed by US and international law.

The Chairman of the Lawyers Committee is Marvin E. Frankel; Tom A. Bernstein is its President; Michael H. Posner is its Executive Director; Stefanie Grant is Director of Program and Policy; George Black is Research and Editorial Director; Joe Eldridge is Director of its Washington D.C. office; and Robert O. Weiner is Coordinator of the Latin American and Caribbean program.

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Introduction

Captain Lawrence Rockwood faces court-martial on May 8 on charges arising out of his single-handed attempt to inspect the conditions at Haiti's notorious National Penitentiary. As a counterintelligence officer with the Army's 10th Mountain Division, the largest component part of the U.S.-led Multinational Force (MNF) in Haiti, Captain Rockwood analyzed information on human rights violations prior to and during the MNF's deployment. Even as U.S. troops discovered sickening mistreatment in another Haitian prison -- confirming years of human rights reporting - a week after their September 19 landing, Captain Rockwood was seeking authorization to inspect the National Penitentiary, Haiti's largest prison. He was unsuccessful. Self-protection, but not rights protection, was the priority for the U.S.'s overwhelming array of forces in Haiti. Concerned that the MNF had failed to fulfill pressing responsibilities at the expense of endangered civilians and convinced that he was following the Commander-in-Chief's intent, Captain Rockwood went alone to inspect the prison on the evening of September 30.

Alerted by Captain Rockwood himself to these actions, his superiors sent a U.S. military official to the prison who interrupted his inspection and escorted him from the building. Before he left, Captain Rockwood was able to view two dozen severely emaciated prisoners in a 20-foot square cell in the infirmary, but could not inspect the main holding cell. Subsequent visitors, including international prison inspectors, a U.S. congressman, a U.S. undersecretary of defense and several U.S. military police officers attached to the 10th Mountain Division have confirmed the appalling conditions.

Captain Rockwood's superiors remained apparently unmoved. According to General James Hill, MNF deputy commander after General Meade's departure, the MNF command first authorized an official inspection of the prison for *December 19, ten weeks later*, a late start on President Clinton's September 15 invocation to U.S. soldiers to "stop the brutal atrocities that threaten tens of thousands of Haitians."

In exchange for his efforts, Captain Rockwood's commanding officer has preferred five charges against him, including failing to show up for the night shift at the MNF compound; unauthorized leaving of the infirmary to which he was sent after the failed inspection; disrespect (raising his voice) and disobedience (refusing to lower his voice) to his superior officer; and conduct unbecoming an officer and a gentleman. (The specification on the last charge, conduct unbecoming an officer and a gentleman, is almost Kafkaesque. After recounting Rockwood's actions it alleges that he "personally creat[ed] a dangerous and unstable incident [sic] between the U.S. government and the government of Haiti during a period when the U.S. government attempted to maintain a stable relationship with the de facto government of Haiti to avoid unnecessary violence.") The charges carry a combined maximum sentence of ten years in prison.

Captain Lawrence Rockwood confronted first-hand the frustration of many of those who watched the mission unfold. Although the Lawyers Committee spoke to other soldiers in 1994 who shared his view that in the early months of its mission the MNF command gave insufficient attention to egregious human rights threats, Captain Rockwood's conduct has highlighted the issue in a particularly compelling manner. Although much of the debate and indeed much of the assistance that has been offered by his pro bono counsel, by the Lawyers Committee, and by others has been directed to his defense, it is Rockwood's intent that the controversy serve the future. His principled disobedience should prompt a healthy debate over a range of issues, from the role of human rights in multilateral peacekeeping operations to the proper balance which should be set between military discipline and competing obligations and convictions.

Implications of the Prosecution

Every era, every nation, and probably every military action has those who break with discipline, violating or disobeying orders. Their punishment is rarely

concern beyond the individuals and institutions involved.

United States vs. Rockwood, Lawrence P. is different. No matter how it is resolved, the case will be a benchmark for the nation, for the military, and for current and future soldiers. The pertinent issues are novel, arising in an era of military peacekeeping operations which little resemble their predecessors. Yet the controversy is a classic one, pitting obedience to superior officers against the dictates of one's convictions.

The potential legacy is worth considering. What lesson will soldiers and -- perhaps more important -- commanders draw from this experience? A conviction will certainly discourage other soldiers from weighing questionable orders against other compelling obligations. Undoubtedly, it will also insulate the Army from a critical look at its own actions and omissions, unless others compel such introspection.

The Army has already signaled its desire to avoid such scrutiny, whether from within or without. Claiming that motive is immaterial to the crimes charged, the Army has sought to prevent Captain Rockwood from telling the court-martial the reasons for his actions. The military judge who denied the Army's motion also blocked its attempt to "gag" Captain Rockwood and his lawyers to prevent them from explaining to the public that he feels what he did was right and why.

Peacekeeping and Human Rights

The Army's response is all the more disconcerting because of the need to review traditional military assumptions in light of a changing military role. Peacemaking, peacekeeping and peacebuilding (hereinafter, "peacekeeping") operations confound many of the assumptions that underlie traditional military operations. Humanitarian law, developed for armed conflict, aims to limit combat-related harm to civilians, prisoners and wounded. Human rights law contemplates a

peacetime reality distinct from many of the extraordinary situations which call for peacekeeping.

There is ample need for a nuanced understanding of this evolving situation. Most peacekeeping operations are deployed as hostilities wind down, or where a relatively demilitarized area has been carved out. Their troops are not intended to engage in combat. At the same time, these missions often confront the lingering hostility and other ill effects associated with recent conflict. Moreover, because they so often deploy in situations of transition, they are part of the process of creating or restoring the institutions of state and society. The varied mission components reflect these broader needs and objectives. International police often accompany troops to help ensure security, and train and monitor national police; human rights observer teams document violations.

The international foundations of peacekeeping initiatives also distinguish them from most military operations. Peacekeeping constitutes an *international* commitment of resources. Regardless of the national make-up of the force (the overwhelming majority of the MNF troops which landed were U.S.) these are never bilateral operations. In Haiti, the United States acts as an agent of the UN exercising a grant of UN authority. As such, the U.S. represents the UN and must reflect UN commitments and obligations as well as adhere to its national legal duties. Military training, like military law, must reflect an obvious reality: by virtue of their essentially constructive purposes, their vastly reduced combat exigencies, and their global character, peacekeeping missions undoubtedly require of their participants more, not less, action to protect basic human rights. The mandate of the MNF, under Security Council Resolution 940, emphasizes not military victory but the creation of a "stable and secure environment" for the transition to democratic institutions.

U.S. Obligations Under International Law

Human rights law applies to any U.S. military mission abroad. The Haiti effort is no exception. In addition to UN Charter obligations, the International Covenant on Civil and Political Rights requires the U.S. to ensure the rights of persons in the U.S. and/or subject to U.S. jurisdiction, even if they are beyond our national borders. (Our federal courts have accepted this principle.) These duties derive not from the UN Charter or from the treaties themselves, but from customary rules, acknowledged as firmly established law, of which the treaties are a concrete manifestation.

Humanitarian law is traditionally understood to require an armed conflict before its detailed rules are, strictly speaking, applicable. However, there is growing support for the view that even without separate warring sides, violence in a contested political situation may trigger customary humanitarian law governing non-international armed conflicts. Haiti's situation is an interesting case in point. It includes an ongoing conflict over State authority in which the violence, though almost exclusively one-sided, was sufficient for the UN to characterize it as a threat to regional peace and security. The role of the MNF, as a UN proxy, "internationalized" the conflict and finds its closest analogy in the Geneva Convention's "Protecting Power" who, though not a belligerent is designated to monitor the compliance by the parties to the conflict. Therefore, humanitarian law provides a highly relevant framework for non-combat operations such as the MNF's in Haiti.

The U.S. has recognized this, undertaking to apply the Geneva Conventions to all uses of force by MNF troops and to treatment of prisoners. For its part, the UN has obligated all peacekeeping missions operating pursuant to its authority to adhere to the requirements of Geneva law.

These bodies of law impose obligations on States for the protection of persons

subject to their jurisdiction. Customary human rights law comprises general requirements to respect the protection against torture, cruel, inhuman or degrading treatment and to adopt measures necessary to give effect to this protection.

Humanitarian law provides much more detailed and individualized obligations, reflecting that prisoners and other non-combatants will essentially be dependent on the parties to the conflict (and the Protecting Powers) who are responsible for applying the Geneva Conventions. The Protecting Powers are thrust into an affirmative role of verification and insistence, lobbying the parties to the conflict in order to ensure compliance. In order to ensure respect for the Convention, Protecting Powers have the right and the duty to inspect prisons, review the conditions of prisoners and take remedial steps. Provisions regarding custodial authorities make clear that the obligation to ensure proper treatment continues even after the detainee has been turned over to the custody of another. Finally, since torture and inhuman treatment are considered "grave breaches" of the Geneva Convention and therefore, war crimes, specific provisions require all State Parties to take special measures to combat cases of torture and inhuman treatment, including identifying and locating the responsible parties, *regardless of nationality*, and bringing the culprits before its own courts.

Obviously, the duty of individual States is related to the nexus they share with the violation. This is most explicitly noted in the Geneva Conventions which create categories of responsibility (eg., the Protecting Powers) but the logic is reflected in the Civil and Political Covenant which imposes duties on States regarding persons in their territory or subject to their jurisdiction. Few would insist, for example, on Costa Rica's affirmative duty to remedy ethnic cleansing in a Bosnian village. The U.S. commanders of the MNF on the other hand, are the obvious focal point for the obligation to protect Haitian civilians from egregious harms.

Moreover, the U.S. expressly assumed a responsibility for functions of state through an accord negotiated by former President Jimmy Carter with the Haitian

military regime prior to the MNF landing. The Haitian military and police, according to the text, agreed to "work in close cooperation with the U.S. Military Mission ... during the transitional period required for insuring [sic] the vital institutions of the country." A recently released Army document reveals that the U.S. forces had an additional connection to the National Penitentiary. They used it for prisoners. On or about October 15, U.S. military police brought 28 of their own detainees to the Penitentiary to be held by the Haitian army. The author of the document, which reports an assessment of the conditions there by three U.S. military police, readily acknowledges that the conditions are deplorable and that remedial action should be taken. Among other things it notes that prisoners are underfed and often held for prolonged periods without charges, some of them simply "because the Chief of Police, Michel Francois, ordered it."

That the prisoners were held in a Haitian jail overseen by Haitian soldiers does not, therefore, limit the U.S. obligation to ensure that gross violations were not taking place. A wide range of circumstances compel this conclusion: the U.S. leadership of a mission to make Haiti stable and secure, and to restore democratic institutions; its partnership with the Haitian authorities responsible for committing the violations; the absence of a Haitian authority likely to take remedial action; and the commitment from its Commander-in-Chief to use military action -- Operation Uphold Democracy - - to end human rights abuses in Haiti.

Under relevant legal standards, U.S. commanders would bear responsibility -- even individual criminal responsibility -- for failing to take steps to end a pattern of serious abuses by personnel under their authority. Given the U.S. authority in Haiti, and the cooperation agreement with the Haitian military, it can be argued persuasively that the U.S. bore the responsibility for intervening to stop inhuman treatment by Haitian security forces. (Prior to his action, Captain Rockwood confirmed with his unit's legal officer that the MNF's own rules of engagement required such intervention when life threatening circumstances are observed by U.S. troops.)

Prisons: A Particular Focus of Concern

Prisons, particularly Haitian prisons, are of special concern for military forces on foreign soil. Where a military operation coincides with or brings about a major shift in power (eg., restoring democratic leadership), the danger is particularly acute that agents of the old regime will kill political prisoners lest they later bear witness to the crimes it perpetrated while in power. For example, the Cambodian museum which once housed Pol Pot's most notorious prison displays chilling photos of the last prisoners. Still chained to their beds, they had been hastily killed before their captors fled from an advancing Vietnamese army. The Nazis left behind much evidence of their last-ditch efforts to kill prisoners and hide evidence of atrocities as the Allied forces approached.

U.S. Army operations normally reflect this sensitivity. In Panama, concern for the lives of detained Americans and pro-democracy Panamanian nationals lent particular urgency to the task. Operations manuals for both the Army and the 10th Mountain Division list detention facilities as priority areas for civil-military operations such as the MNF's Operation Uphold Democracy.

General Hill, who began his command in Port-au-Prince in early 1995, linked the need to confront prison conditions to the MNF's UN mandate (in Security Council resolution 940) to provide a "stable and secure environment" for the full transition to democracy. In a lengthy interview with a *Village Voice* reporter on the prisons in Haiti, he acknowledged that "you cannot continue at long term to have a stable and secure environment unless all three parts of the judicial system are working: the police, the courts and the prisons."

For General Hill, the National Penitentiary was "absolutely" an MNF priority under his command. He even thought, mistakenly, that the National Penitentiary had been important to the 10th Mountain Division under General Meade.

Haiti's Prisons: Abuse Foretold

Even if Captain Rockwood had never approached his superiors with this issue, there exists ample documentation of Haitian prison conditions before and after his actions; the United States was on notice.

For years prior to the MNF deployment, human rights groups, the United Nations, and even the State Department reported that Haitian detention centers are breeding grounds of serious abuse, there are several grounds for priority treatment by the MNF. In the words of the State Department's annual human rights report for 1993, "prison conditions are abysmal. ... Brutal beatings with fists and clubs, torture, and other cruel treatment of detainees were common." For 1994, the warning was upgraded: "The de facto authorities routinely" committed the same abuses.

Soon after they arrived, U.S. forces discovered in Les Cayes an abandoned dungeon of horribly mistreated prisoners, some of them literally rotting away. (Incredibly, though this discovery occurred in the middle of Captain Rockwood's bureaucratic odyssey, it had no effect on the command's determination to ignore his requests.)

The U.S. knew that there were no other authorities in a position to inspect prison conditions in Haiti at the time the MNF was deployed. The UN/OAS human rights team, which had limited access during its earlier deployment, had been expelled in July and was not yet operational again, and the International Committee of the Red Cross -- which has typically fulfilled the role envisioned for Protecting Powers under the Geneva Conventions -- would not reach an access agreement with the Haitian military until the end of the first week of October. The National Penitentiary lacked any prisoner registry, so U.S. forces could not, without a physical inventory, rule out the presence of "high risk" political prisoners, or hold the military accountable for deaths caused by inhuman detention conditions.

The National Penitentiary: What Rockwood Would Have Found

A U.S. military police officer who conducted a weapons search within 24 hours of Captain Rockwood, was struck by "appalling conditions ... unsuitable for human habitation." Some of the prisoners were so emaciated that they could not get up from the floor where they lay. He reported to the 10th Mountain Division's commander -- General Meade -- that one portion resembled "a medieval castle one would see in a horror movie." His report urged priority action "in [the MNF's] efforts to assist Haiti in its return to democracy." Three Danish inspectors with the International Police Monitors (IPM) visited most of Haiti's prisons between October and December. Regarding the Penitentiary, they said, "[t]his is the worst prison we have ever seen."

The IPM inspectors noted over 400 prisoners in a cell approximately 400 yards square -- roughly one square yard per person. Few of these prisoners had beds, mattresses or blankets, and the only toilet facility consisted of a hole in one corner of the cell. A food allocation of about *four dollars (US) per person per month* was, according to the IPM report, often very late.

After a visit to the Penitentiary earlier this year, Congressman Dan Burton told a House of Representatives committee that the sanitary conditions were so appalling that gangrene developed, requiring amputations among the prisoners. One of the hearing's witnesses, Undersecretary of Defense for Policy Walter Slocombe, concurred, based on personal observation, that the conditions were appalling.

Captain Rockwood's Duty to Act

Captain Rockwood's defense will reflect traditional principles of justification. (It will also argue duress, which excuses illegal acts taken by the accused in the belief that they would prevent an imminent serious harm to another.) Justification applies

where the act was in fact legal pursuant to an authority superior to the order which it violates. Under international law recognized and binding on the U.S., Captain Lawrence Rockwood had a right and a duty to act where no other U.S. official would.

Captain Rockwood repeatedly brought this information to the attention of his superiors. He succeeded only in confirming the unfathomable: that they would not act. If he did not, no one would. The action was justified because it fulfilled a duty that the command would not: *at a minimum*, to investigate the strong possibility of inhuman treatment.

The Army's position has been that the order which Captain Rockwood allegedly violated -- a directive about the proper procedure for leaving the MNF compound and a duty order to be at the compound at the time he was at the Penitentiary -- were lawful and therefore immune from second guessing. The Lawyers Committee believes that this approach misses the point, and would validate omissions and inaction which directly violate U.S. legal obligations. The relevant command directive in this case was embodied in the decision not to authorize him to inspect prison conditions. Captain Rockwood's actions fulfilled a duty which was present at the time, urgent at the time, and highly unlikely to be filled by another. Any command order, act, omission or disciplinary proceeding which stands in opposition is suspect and must be carefully scrutinized.

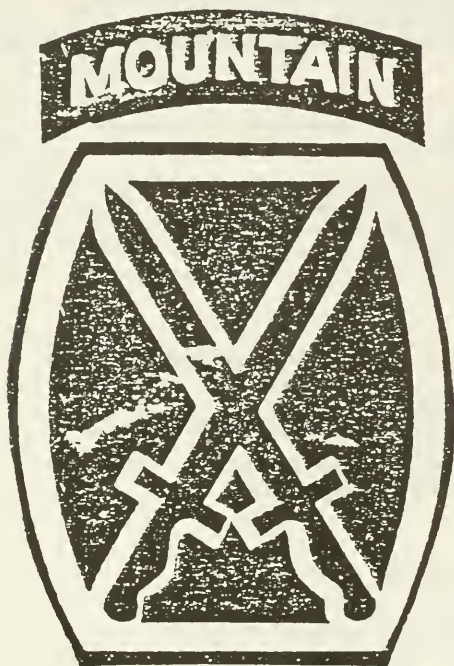
One war crimes judgment is worth considering in this regard. In that case, General Yamashita, a World War II commander of Japanese troops in the Philippines, was executed for failing to take action to a pattern of serious abuses between October 1944 and September 1945. The charge did not allege that General Yamashita knew of these acts. The U.S. Supreme Court, which heard the appeals, reasoned that General Yamashita was liable for failure to restrain subordinates' abuses of which he knew or should have known. The Lawyers Committee does not suggest that General Meade's

failure to act is the equivalent of General Yamashita's. However, the case is instructive, for reasons highlighted in the dissenting opinion on appeal. Justice Murphy noted that the acts committed by General Yamashita's troops occurred as Allied forces were laying siege to the Japanese troops in the Philippines, effectively destroying Japanese lines of communication, disorganizing their troops and blocking Yamashita's ability to maintain effective control. Rather than alleging or proving that the General committed, ordered or condoned the acts by his disintegrating forces, the prosecution argued, and the Supreme Court accepted, that General Yamashita bore command responsibility for the chaos that the successful U.S. attacks helped to create.

By contrast, the tragedy of the Rockwood case is that the MNF, in unquestionable control, with overwhelming force, facing a subordinate rather than adversarial foreign army, and serving under a mandate to rectify military abuse in preparation for democracy, would not authorize a six-kilometer trip to a downtown prison to investigate serious abuse. Regardless of how a military jury votes on Captain Rockwood's actions, the Army has yet to square its conduct with its legal obligations, and President Clinton's public call for an end to human rights abuse in Haiti.

The responsibility of States devolves onto individuals who are in a position to ensure or thwart fulfillment of these obligations. As the Nuremberg Tribunal stated in judgment on command level officials whose subordinates committed atrocities nearly a half century ago, "...individuals have international duties which transcend the national obligations of obedience imposed by the individual state." The world's most powerful nation, once a driving force at Nuremberg, should not now stand its principles on their head.

10TH MOUNTAIN DIVISION (LI)



CIVIL MILITARY OPERATIONS HANDBOOK

1 FEBRUARY 1992

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LAW ENFORCEMENT AGENCY CHECKLIST

1. Name of facility.
2. Location:
 - a. Grid coordinate.
 - b. Street address.
 - c. Telephone number.
3. Chief of Police.
4. Other points of contact.
5. Jurisdiction:
 - a. Boundaries.
 - b. Square miles.
 - c. Population of area.
6. Personnel:
 - a. Police:
 - (1) Uniformed.
 - (2) Plain clothes.
 - (3) Number of admin/support.
 - (4) Number of auxiliary forces.
 - (5) Number of border guards.
 - (6) Number of para-military.
 - (7) Number and types of specially trained personnel
 - (8) Location of records (personnel and criminal).
 - (9) Covert operations in progress:
 - (a) Targets.
 - (b) Number of operations

7. Equipment:

| | <u>TYPE</u> | <u>NUMBER</u> | <u>LOCATION</u> |
|----|--|---------------|-----------------|
| a. | Vehicles. | | |
| b. | POL sources. | | |
| c. | Weapons. | | |
| d. | Ammunition. | | |
| e. | Riot equipment. | | |
| f. | Rescue. | | |
| g. | Special equipment (PA systems, computers, helicopters, etc.) | | |

8. Communications: Location of central police broadcast facility and auxiliary.

| | <u>TYPE</u> | <u>NUMBER</u> | <u>LOCATION</u> |
|----|-----------------------------|---------------|-----------------|
| a. | Radios. | | |
| b. | Telephones. | | |
| c. | Teletypes. | | |
| d. | Interagency communications. | | |

9. Confinement facilities.

| | | | |
|----|----------------------------------|--|--|
| a. | Name. | | |
| b. | Address. | | |
| c. | Grid coordinate. | | |
| d. | Telephone number. | | |
| e. | Type of facility. | | |
| f. | Maximum capacity. | | |
| g. | Present capacity. | | |
| h. | Number of guards (adequate Y/N). | | |

- i. Capacity of kitchens.
- j. Name of warden.
- k. Overall condition of facility and inmates.
- 10. Private Security Organizations.
 - a. Name.
 - b. Address.
 - c. Grid coordinates.
 - d. Telephone number.
 - e. Number of personnel.
 - f. Chief.
 - g. Other points of contact.
- 11. Mutual aid agreements with adjoining facilities.

| <u>ORGANIZATION</u> | <u>ADDRESS</u> | <u>TELEPHONE #</u> | <u>AGREEMENT</u> |
|---------------------|----------------|--------------------|------------------|
|---------------------|----------------|--------------------|------------------|

12. Contingency plans:

- a. What is the role of the police force in:
 - (1) National defense.
 - (2) National emergency.
 - (3) Disaster relief/rescue.
- b. Is the police headquarters defendable?
- c. Can police impress/deputize local citizens (Y/N)?
- d. Obtain a map of police jurisdiction if possible.
- e. Are DC evacuation routes plotted (Y/N)?
- f. What support can be provided to U.S. forces?
- g. How can police information be reported to U.S. intel channels?

Army Regulation 20-1

**Assistance, Inspections, Investigations, and
Followup**

**Inspector General
Activities and
Procedures**

**Headquarters
Department of the Army
Washington, DC
15 March 1994**

UNCLASSIFIED

the complaint will be investigated at a lower level, the IG will explain that this is the normal procedure. The IG will also explain that the purpose of this referral action is to allow the appropriate command the opportunity to identify and correct deficiencies within the command, thereby reinforcing the local chain of command's ability to correct problems once they are identified. The complainant will also be informed that the next higher command will review the completed casework of referred cases to ensure the responsible command thoroughly and impartially addressed the complainant's concerns. If the complainant still objects, the IG will notify the complainant that the case will be investigated at an appropriate level other than the command against which the allegation or complaint was made.

(5) The IGs will analyze each complaint or allegation of impropriety to determine the potential for embarrassment or adverse impact on that command. If the IG determines that the allegation would, if substantiated, adversely affect the public perception of the command's effectiveness, efficiency, readiness, training, morale, or other similar factors, the IG will promptly notify the next higher IG of the allegation. The next higher IG will determine which command IG (other than the command at which the allegation was made) should actually work the case, and will retain the responsibility to review the completed investigation for thoroughness and impartiality. Ordinarily, it will be appropriate for the next higher IG to provide the final response to the complainant.

Note: Allegations within the meaning of this paragraph will vary. They may include matters such as allegations of impropriety against senior officials within a command (other than general officers or SEs). (See chap 7).

Other allegations include areas in which the local or national media may have an interest, complaints of sexual harassment by supervisors, and reports of fraud, waste, and abuse. IGs should consult with their next higher IGs in doubtful cases.

(6) All referrals to HQDA will be sent to Assistance Division, HQDA (SAIG-AC), WASH DC 20310-1738.

(7) When the IGAR concerns an activity or program of another Service, the IG should refer the IGAR to the local IG of that Service. The IG will provide information copies of the referral to the MACOM. If an IGAR cannot be resolved locally through referral to the other Service IG, forward the IGAR to USAIGA's Assistance Division, with a description of the attempts to refer locally.

(8) If appropriate to the case, inform the requester of established means of redress. Paragraphs 6-7 and 6-8 list some specific types of redress available. IGs will limit their assistance in these cases to a review, after completion of action on the request for redress, of whether due process was afforded the requester.

c. A requester may voluntarily withdraw an IGAR at any time. The IGs will not suggest that a requester withdraw an IGAR, however, if the requester desires to do so, IGs should normally require a written request to properly document the request. When an IGAR is withdrawn, the commander, State AG, or detailed IG may decide to continue to process some or all of the IGAR to address deficiencies in Army procedures or systems.

f. The IGs must analyze the substance of complaints and requests for assistance from contractors involved in commercial activities, procurement activities, or contracting, to determine if they are proper for IG inquiry. Coordination with the supporting judge advocate, general counsel, or the USAIGA's Legal Advisor is recommended.

6-5. Conducting an Inspector General Inquiry

a. An IG inquiry is the most common means used by IGs to gather the information needed to respond to a requester. It is an informal fact-finding process that may be as simple as making a single telephone call. If statements are taken, they normally are not recorded or sworn. If reduced to writing, they are normally summarized. An IG inquiry must be timely and thorough. It must provide the basis for responding to the IGAR and for correcting underlying deficiencies in Army procedures and systems. The IGAR file must contain information that supports the conclusions reached and a copy of the response to the requester.

b. The IG responsible for processing the IGAR determines the best way to conduct the IG inquiry. Telephone calls, visits, interviews, and coordination of actions taken by various agencies are some of the more common IG inquiry actions.

e. An appropriate format for recording the results of an IG inquiry is to list each request or allegation, provide a discussion of the facts and evidence, and state a conclusion. The format for an ROI, which is provided in the Assistance and Investigations Guide, is recommended. An allegation will be written so that, if substantiated, it represents a violation of Army policy or standards, or a deficiency in Army procedures or systems. For example, "Sergeant Smith improperly destroyed supply records in violation of AR 710-2."

d. When an IG interviews a person, the IG may record impressions of the person's attitude, sincerity, and truthfulness. The IG will enter these in the IGAR file and will clearly indicate they are impressions. Remember, however, that the file is subject to FOIA release.

6-6. Actions on certain types of Inspector General Action Requests

a. Soldier nonsupport of family members or private indebtedness.

(1) If a family member alleges lack of basic needs such as food or shelter, the IG should ensure that the immediate basic needs of the family are met.

(2) Resolving nonsupport and indebtedness claims is a command responsibility; the IG's primary role is to ensure that the commander is aware of allegations and takes appropriate action. AR 608-99 prescribes actions for the commander to take for nonsupport cases. AR 600-15 prescribes commander's action for private indebtedness cases. An IG becoming involved with these matters will determine if the requester has forwarded the complaint to the soldier's commander. If not, the IG should offer assistance in forwarding and properly routing the complaint. If the requester has already initiated appropriate action, the IG should continue assistance only if the commander has not responded satisfactorily. In that case, the matter should be handled in IG channels, but only to the extent necessary to ascertain if the commander fulfilled obligations required by law and regulation.

(3) Issues involving nonsupport should be coordinated with the servicing SJA.

b. Soldier EO complaints. The EO advisor, under provisions of AR 600-10, the IG, or an investigating officer appointed under AR 15-6, may address EO complaints made by soldiers. The manner in which EO complaints are addressed and who specifically addresses the complaint is a command decision. (For NG personnel, see para 6-14b.) However, when an EO complaint is forwarded for inquiry or investigation through IG channels, any response must be transmitted using the same channels. When the requester seeks redress for past alleged discriminatory practices that have become part of official Army records, the IG should advise the requester to seek redress through appeals procedures provided by law or Army regulations pertaining to the particular adverse action. Examples include OER or NCOER appeals, courts-martial, and other actions listed in paragraph 6-7.

c. Responses to Congress. An IG who receives a request for assistance directly from an MC, or from the installation or activity congressional liaison office, will notify USAIGA's Assistance Division expeditiously. (For NG IGs, see para 6-14c.) If the installation or activity congressional liaison office receives a case on which the IG is currently working, or has already completed an inquiry, the local IG must inform the tasking official that the response will be forwarded through IG channels to USAIGA's Assistance Division. These cases are handled as IG cases. USAIGA's Assistance Division will contact the Office of the Chief, Legislative Liaison (OCLL) to have the case transferred to the Assistance Division. Once the inquiry is complete, the local IG will forward the report of inquiry through the MACOM IG to USAIGA's Assistance Division. The Assistance Division will prepare the final response to the MC and furnish copies to OCLL and the IG office (or offices) that processed the case.

(3) The Army has established means of redress. (See paras 6-7 and 6-8.)

(4) The allegations involve professional misconduct by an Army lawyer, military or civilian. Such allegations will be referred through the USAIGA Legal Advisor to the senior counsel (for example, The General Counsel of the Army, TJAG of the Army, the Command Counsel of AMC, or the Chief Counsel of the U.S. Army Corps of Engineers) having jurisdiction over the subject lawyer, for disposition.

(5) The allegations involve mismanagement by a member of the Judge Advocate Legal Service serving in a supervisory capacity. Such allegations will be referred through the USAIGA Legal Advisor to TJAG for disposition under AR 27-1.

c. When IGs need more information concerning allegations or issues, they may conduct an IG inquiry or IG investigation to develop the situation. If it becomes apparent that further IG involvement is inappropriate, they should close or recommend closure of the IG inquiry or IG investigation in favor of a better course of action (for example, investigate per AR 15-6, or refer to CID).

d. The SA has authorized TIG to investigate all Army activities. Only the SA, USofA, CSA, VCSA, and TIG may direct conduct of DAIG investigations. Heads of HQDA agencies, commanders, and State AGs may request that TIG conduct an investigation, but they are not authorized to direct TIG to do so.

e. Commanders whose staffs include a detailed IG may direct IG investigations into activities within their command. Detailed IGs are authorized to investigate within their organizations and activities, as specified by their directing authority. Installation IGs may conduct investigations and inquiries at tenant MACOM units after mutual agreement between the installation IG and the tenant unit MACOM IG.

f. State AGs whose States have detailed IGs may direct IG investigations into Federally-related activities within their States.

g. An IG investigation of an allegation concerning a command or its commander normally will be conducted by the next higher command. All allegations involving general officers will be handled per paragraph 7-3i.

h. Allegations against IGs will be forwarded to the next higher command IG for appropriate action. An information copy of the allegation and disposition will be provided to USAIGA's Investigations Division as soon as practicable.

i. Investigations of allegations of impropriety against general officers and senior civilian employees of the Army will be conducted as follows:

(1) Only the SA, USofA, CSA, VCSA, and TIG may authorize or direct an IG investigation of allegations of impropriety against general officers, brigadier general selectees, and civilian employees of SES, or equivalent grade or position.

(2) Forward all allegations of impropriety, including criminal allegations, against general officers (to include NG general officers), brigadier general selectees, and senior civilians to USAIGA's Investigations Division by a rapid but confidential means, within 5 working days of receipt.

(3) IGs who receive allegations of impropriety against general officers and senior civilians may tell their commanders the general nature of the allegations and the identity of the persons against whom the allegations were made. To help protect the complainant's confidentiality, do not reveal either the source or specific nature of the allegations. TIG will ensure commanders, MACOM IGs, and CNOB get added information as appropriate. (See para 1-11.) If the IG who receives the allegation works for the subject of the allegation, or if there are any questions, the IG should contact the Chief, Investigations Division, USAIGA, for guidance.

(4) Address questions to HQDA (SAIG-IN), WASH DC 20310-1700, or HQDA (SAIG-ZXL), WASH DC 20310-1700.

j. Forward allegations against PMs or PEOs who are general officers or DA civilian employees of the SES or equivalent grade to Investigations Division, USAIGA, per paragraph 7-3i. If allegations are made against the PM or PEO staff, the supporting MACOM or MSC IG, will normally conduct the IG inquiry or IG investigation. The PM or PEO will be told the general nature of the allegation and

the identity of the individual against whom the allegation has been made. At the conclusion of the investigation, the PM or PEO may be informed of the results of the inquiry or investigation, when appropriate. Final approval authority for the ROI remains with the directing authority.

k. Directing authorities may, at any time, terminate an IG investigation that they directed. When this occurs, the IG conducting it will file in the IG office an abbreviated report, using the applicable parts of the ROI format per TIG-approved procedures in the Assistance and Investigations Guide.

7-4. Conduct of inspector general investigations

a. IG investigations will be limited to the matters approved by the directing authority, per the Assistance and Investigations Guide. Essential requirements of an IG investigation include the notification of commanders or supervisors and subjects or suspects included in the investigation of the nature of the allegations; appropriate rights warnings; and notification of commanders or supervisors and subject or suspects of the results of the investigation upon its completion. Expanding the scope of an IG investigation requires approval of the directing authority. If the IG discovers matters requiring investigation, which are totally unrelated to an ongoing IG investigation, the IG will report them to the directing authority so an appropriate investigation can be initiated.

b. In most IG investigations, evidence will be developed through documents and interviews of witnesses, per the Assistance and Investigations Guide. IGs always seek the best available evidence. The best evidence from individuals is sworn and recorded testimony by persons with direct knowledge. Evidence of a lesser quality, such as memoranda of conversations, handwritten notes, unsworn statements, second-hand information (hearsay), is also acceptable.

c. IGs will use interview guides in the Assistance and Investigations Guide when conducting interviews.

d. Persons who provide testimony in an IG investigation will normally not be allowed to record their testimony by tape or any other means. After the IG investigation and action by the directing authority are completed, witnesses, suspects, and subjects may obtain transcribed copies of their own testimony by following the procedures in paragraph 3-5d(2).

e. To protect confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them, IGs, during notifications and interviews, will ask people with whom they are talking not to reveal matters under investigation or to discuss them with anyone, except their own lawyer if they consult one, without permission of the investigating officer. IGs will not withhold permission for defense counsel to interview witnesses about matters under investigation.

7-5. Discussion of rights

a. A witness is a person who saw, heard, knows, or has something relevant to the issues being investigated and who is not a subject or suspect. A subject is a person against whom non-criminal allegation(s) have been made. A suspect is a person against whom criminal allegations have been made. A person may also become a suspect as a result of incriminating information that arises during an investigation or interview, or whenever the questioner believes, or reasonably should believe, the person committed a criminal offense. The appropriate rights warning for persons interviewed during an IG investigation varies with their status. Consult the Assistance and Investigations Guide for the appropriate interview guide and warning to use.

b. DA personnel who are witnesses or subjects may not lawfully refuse to answer questions properly related to an IG investigation unless answering the question will incriminate them, will involve certain privileged communications, or will be in violation of their right to union representation as described below. (See Section V, Privileges, Military Rules of Evidence, MCM, 1984.) However, if an investigator suspects, or reasonably should suspect that a soldier being questioned has committed a criminal offense, he must advise the soldier of his rights under Article 31, UCMJ. Soldiers who are suspected of having committed a criminal offense have the right to

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Lawrence T. Di Rita

Court martial with Haitian policy links

In a tragic incident in October 1993, 18 U.S. Rangers were killed when they were ambushed trying to chase down a Somali warlord on the mean streets of Mogadishu. This was one of the early examples of the Clinton administration's confused and often ambiguous foreign policy. The mission in Somalia—nation-building, in the words of U.S. Ambassador to the United Nations Madeleine Albright—had no doubt been a favorite topic in the salons and lecture halls where the administration's Great Thinkers had spent their formative years spinning their Great Theories. But on the drill fields and firing ranges where the young men they sent to die had been brought up, there had been precious little training in how to build a nation.

Which brings us to Fort Drum, N.Y. Fort Drum is the home of the 10th Mountain Division. The troops there are trained to deploy on short notice to defend vital American interests. Last September, the American commander-in-chief

determined it was in the vital interests of the United States that there be democracy in Haiti. In an emotional address to a skeptical nation, President Clinton discussed what would come to be known as Operation Uphold Democracy by declaring that the United States must "stop the brutal atrocities that threaten tens of thousands of Haitians." As he spoke, the forces of the 10th Mountain Division were making ready to go do just that. (Of course, the president's cynical decision to send negotiators to cut a last-minute deal with the authors of those atrocities had not yet been revealed. That may have dampened the ardor of the forces he was sending to uphold democracy in poor

Haiti.)

Within two weeks of that speech, Capt. Lawrence P. Rockwood, a U.S. military intelligence officer assigned to the 10th Mountain Division and newly arrived in Haiti, entered the National Penitentiary in Port-au-Prince to investigate some of the brutal atrocities of which his commander in chief had spoken. His inspection visit had not been approved by his superiors. In his own words, he had "for one week tried in vain to organize an inspection of the National Penitentiary," the well-known site of some of the worst of the brutal atrocities he had been sent to stop. He acknowledges having disobeyed orders not to leave his compound,

but decided that "the military oath of office not only allowed but compelled (him) to place loyalty to the Constitution and the president of the United State before obedience to... immediate superiors."

For blind obedience to a commander in chief who neither understands nor appreciates the training, motives and traditions of the troops he commands, Capt. Rockwood faces 10 years in prison and a felony conviction for, among other things, dereliction of duty and conduct unbecoming an officer. To be sure, Capt. Rockwood disobeyed orders not to leave his compound on the night in question. Every well-trained officer knows the consequences of such a decision, indeed, Capt. Rockwood chose a court-martial over quiet resignation of his commission.

But what will be on trial in that military courtroom will not be Capt. Rockwood's actions last September, but the Clinton administration's self-proclaimed foreign policy victory in Haiti. As in Somalia, the administration invited trou-

ble by placing into the middle of a sociopolitical conflict combat troops ill-suited for the mission on which they were sent. Capt. Rockwood is a casualty of that foolish decision, no less than the 18 Rangers whose deaths we mourned nearly two years ago.

We should not be surprised to learn that American forces, the most well-respected institution in the nation by a large margin, appear incapable or even incompetent in the face of challenges such as nation-building and democracy restoration. Would we trade their ability to regain territory from an enemy bent on dominating the world's oilfields for the skills needed to capture petty warlords or to serve as Third World jailers? After all, the history of those countries where the armed forces are more competent in nation-building than war-making is not a glorious one. I refer you to Argentina, whose generals had a troublesome habit of taking over the country's political institutions, but during the Falklands War proved manifestly inca-

pable of defending an offshore island against a military force deployed from 4,000 miles away.

This is not to exonerate Capt. Rockwood. The integrity of the American military depends on officers adhering to orders and enforcing that discipline on subordinates.

Capt. Rockwood disobeyed his orders, aware that his actions, as he puts it, "would be viewed outside the range of what is usually associated with 'good order and discipline.'" His conduct was indeed unbecoming of an officer, and for that he will be punished. But the integrity of the American military depends no less on its civilian leadership understanding what the force it controls can and cannot do. First in Somalia, later in Haiti, President Clinton may have been guilty of conduct unbecoming a commander in chief. The trial date is set for Nov. 12, 1996.

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